



Qendra për Arsim e Kosovës  
Kosova Education Center

KEC

**ENHANCING SOCIAL SCIENTIFIC RESEARCH IN KOSOVO  
AND ITS INTEGRATION INTO EUROPEAN RESEARCH AREA (ESSIE)**

# **SOCIAL SCIENTIFIC ARTICLES**

Pristina, October 2014



An EU funded project  
managed by the European Union Office in Kosovo



Qendra për Arsim e Kosovës  
Kosova Education Center

**KEC**

**ENHANCING SOCIAL SCIENTIFIC RESEARCH  
IN KOSOVO AND ITS INTEGRATION INTO  
EUROPEAN RESEARCH AREA (ESSIe)**

**SOCIAL SCIENTIFIC  
ARTICLES**

Pristina, October 2014

**ESSIe**, an EU funded project running from 2002 to 2014 with 6 project partners, aims at the enhancement of the social scientific research in Kosovo and its integration into the European Research Area (ERA). Its core objectives are to support and strengthen social scientific research capacity in Kosovo by developing human resources and research infrastructure, and facilitating participation in the European research programmes. ESSIe project is being coordinated by the Kosova Education Center.

ESSIe project is implemented by the Kosova Education Center (KEC) in partnership with University of Pristina – Institute for Social Studies and Humanities (ISSH), University of Vienna and three non-research institutes from Austria: Center for Social Innovation (ZSI), Institute for Social Research and Analysis (SORA) and Working Life Research Centre (FORBA).

**Publisher: Kosova Education Center - ESSIe project**

The publication of social scientific articles is an ESSIe deliverable produced in the frame of the project's Work Package 4: Establishment and implementation of the International Mentoring Programme, Task 4.3: Supervision of the scientific articles of the mentees. Neither the European Union, nor ESSIe project partners and Kosova Education Center, as a main publisher of this book, are responsible for any use that may be made of the information contained therein.

**Editorial Board:**

Dr. Hasnije Ilazi (University of Pristina)  
Univ.-Prof. Dr. Birgit SAUER (University of Vienna)  
Mag. Dr. Klaus Schuch (ZSI)  
Dr. habil. Ursula Holtgrewe (FORBA)  
Günther Ogris, MA (SORA)  
Kushtrim Bajrami (KEC)

**Language Editing:** Xhavit Rexhaj

**Design, Typesetting and Cover Illustration:** Petrit Tahiri

**Date of publication:** October 2014

**Please cite this publication as:** ESSIe (2014): Social Scientific Articles.

**Available from:**

<http://www.kec-ks.org>

Kosova Education Center (KEC)  
Third Millennium School Compound  
Isa Kastrati st.nn, 10000 Pristina, Kosovo  
Tel. +381 35 244 257/ext.102.  
E-mail: [kbajrami@kec-ks.org](mailto:kbajrami@kec-ks.org)  
Web: <http://www.kec-ks.org>

## CONTENT

<b>Foreword.....</b>	<b>5</b>
Socio-Economic Rights as Human Rights: The role of International Human Rights Treaties and Mechanisms in Progressive Realization of these Rights in Kosovo and Austria.....	7
<b><i>Valon MURATI</i></b>	
Politics of identity and ethnic relations in Kosovo .....	81
<b><i>Bekim BALIQI</i></b>	
Intimate partner violence among male and female students in Kosovo .....	105
<b><i>Kaltrina KELMENDI &amp; František BAUMGARTNER</i></b>	
Measuring creativity: Comparison between gifted and regular pupils in Kosovo .....	125
<b><i>Njomza LLULLAKU</i></b>	
Measuring the Effects of Trade Liberalisation in Kosovo .....	145
<b><i>Florin PEKI &amp; Mario HOLZNER</i></b>	
The Role of Creative Industries on Export and Employment in Small and Medium Enterprises – The Case of Kosovo .....	165
<b><i>Besart L. HAJRIZI</i></b>	



## **Foreword**

Enhancing Social Scientific Research in Kosovo and its integration into European Research Area (ESSIe) is an EU funded project managed by the European Union Office in Kosovo. The Project is implemented in the period 2012-2014 by the Kosova Education Center (KEC) in partnership with 6 project partners, academic institutions, University of Pristina – Institute for Social Studies and Humanities (ISSH), University of Vienna and three non-research institutes from Austria: Center for Social Innovation (ZSI), Institute for Social Research and Analysis (SORA) and Working Life Research Centre (FORBA).

ESSIe's core objectives are to contribute to enhancement of social science knowledge base in Kosovo in support of socio-economic development of the country and its integration into the European Research Area. The project specific objective is to strengthen social scientific research capacity in Kosovo by developing human resources and research infrastructure, and facilitating participation in the European research programmes.

The main project results and activities are:

- A social sciences methods laboratory equipped with 15 PC's, as well as statistical and text analysis programmes, established in the Institute for Social Studies and Humanities of the University of Pristina.
- Research capacity development of thirty-five young Kosovan social scientists from public and private sector organizations.
- Organizing launching conference “Horizon 2020” including Kosovan and international researchers in European research programmes.
- Eleven social scientists graduated from the research training programme for International Social Scientists Research

Qualifications and participated in a Mentorship Programme which included a two week fellowship in Vienna.

- An international scientific workshop “Social and Social Sciences Challenges in Kosovo” organized resulting in an increased international perception of social-sciences in Kosovo and an exchange forum between producers of social-scientific evidence and its users.

In course of the project implementation, eleven social scientists participated in a Mentorship programme which included a two week stay in Austria with a job shadow component, the provision of access to libraries (including online archives), a fully equipped work environment for the mentee and a strong focus of the mentor on supervising the elaboration and publishing of the scientific article of the mentee. Research institutions from Austria that offered mentorship for the selected mentees are: University of Vienna, Centre for Social Innovation, SORA Institute, FORBA institute and Vienna Institute for International Studies. This book provides some of social scientific articles of the candidates that graduated in their mentorship programme.

At this point we would like to express our gratitude to the researchers, who authored the articles in consultation with the experts from respective thematic fields from our project partner's organizations. Finally, we would like to express our appreciation to European Union Office in Kosovo for their unreserved and continuous support to our work.

Kushtrim Bajrami, *Project Coordinator*

Pristina, October 2014

**Socio-Economic Rights as Human Rights:  
The role of International Human Rights Treaties and  
Mechanisms in Progressive Realization of these  
Rights in Kosovo and Austria**

**Valon MURATI, MA**

**Director, Human Rights Centre of the University of Pristina  
Lecturer, Higher Education Institution, AAB**

Pristina, September 2014

## **Abstract**

---

In this article has been observed the differences and similarities between civil and political rights in one side and socio-economic in other side. The legal and philosophical aspect of this issue has been explored up till date. Therefore general perception drawn also from this article is that the modern trend is that these two sets of rights are not seen in contradiction to each other, but they are considered as equal, universal, interdependent and indivisible. Furthermore socio-economic rights more and more in many fields are considered as justiciable, even though they are considered as progressive and programmatic rights when it comes to their realization. This article than as its case study observes the state of the realization of the socio-economic rights in Kosovo, its legal framework and its problems in having access to the international human rights mechanisms. The legal framework in Kosovo than is compared to that in Austria, particularly was treated the idea that socio-economic rights are progressive rights and they may be realized progressively based in general socio-economic situation of the society and a state. In this context have been analyzed the relationship of Austrian state with UN Committee on Economic, Social and Cultural Rights and European Committee on Social Rights. It was stated that Austria is a good model to be followed when it comes to the establishing of the welfare state, while Kosovo has also to depend on its own political, legal and socio-economic peculiarities.

## List of Abbreviations

<b>ACtHR</b>	Inter-American Court on Human Rights
<b>CAT</b>	UN Convention Against Torture
<b>CEDAW</b>	UN Convention on the Elimination of all Forms of Discrimination Against Women
<b>CESCR</b>	(also used as The Committee) – The Committee on Economic, Social and Cultural Rights
<b>CoE</b>	Council of Europe
<b>CRC</b>	United Nations Convention on the Rights of Child
<b>ECHR</b>	European Convention on Human Rights
<b>ECOSOC</b>	UN Economic and Social Council
<b>ECSR</b>	European Committee on Social Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ESC</b>	European Social Charter
<b>EULEX</b>	European Union Rule of Law Mission in Kosovo
<b>HRC</b>	Human Rights Committee
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>KFOR</b>	NATO led Kosovo Force
<b>UDHR</b>	The Universal Declaration on Human Rights
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Program
<b>UNMIK</b>	United Nations Interim Administration Mission in Kosovo

## **Introduction**

A concept about ‘the three generations’ of human rights, and particularly about the supremacy of the civil and political rights over the socio-economic rights, has been in the centre of debates between proponents of the idea that only justiciable human rights are civil and political one on one side, and proponents of the idea that also socio-economic rights can be justiciable, on the other. While this debate was more intense during the Cold War, it was also divided along ideological lines, whereby West was seen to be more prone to ‘traditional rights and liberties’ i.e. civil and political rights, and East together with the Third World Countries more inclined to socio-economic rights. In this paper will be explained that the reality was much more complex on both sides. After the Cold War ended an era started when all human rights are considered as equal, universal, interdependent and indivisible. Even though the mechanisms established by international and regional treaties, and their jurisprudence (Human Rights Committee, European Court of Human Rights, Inter-American Court on Human Rights, etc), still favor civil and political rights. There is a rising trend however that these mechanisms, including for instance the European Committee on Social Rights, and domestic courts are contributing ever more in empowering the justiciability of socio-economic rights. The trend is expected to be enhanced after the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which establish the mechanism of individual and collective complaints to be brought in front of the Committee on Economic, Social and Cultural Rights. These issues will be debated in the first two chapters of this paper.

It has been asserted many times that Kosovo’s Constitution is among the best constitutions in Europe, in particular regarding the application of the highest standards of human rights. In article 22 seven international human rights treaties (among which ICCPR, ECHR, CRC, CAT etc.) and UDHR are set as directly applicable in the Kosovo Constitution. Furthermore in case of contradiction with

the domestic laws these documents take precedence. The entire second chapter of the constitution is dedicated to the fundamental rights and freedoms. However, out of the 31 rights granted to the Kosovo citizens only three are of pure economic and social nature, with the others mostly civil and political in nature. In addition, even though there are many human rights documents and treaties directly applicable in Kosovo through the above mentioned article 22 of the Constitution, International Covenant on Economic, Social and Cultural Rights and European Social Charter in not included in that group of instruments.

This is in vivid contradiction to the claim that Kosovo Constitution has embraced the highest standards of human rights within its framework. If human rights are universal, interdependent and indivisible, then excluding these documents from the constitution is also in contradiction with these accepted principles. One of the main reasons for the exclusion of these instruments is said to be that their implementation requires taking positive financial measures. The fact that socio-economic rights are to be achieved progressively makes this argument not to sound valid. The third chapter of this paper will show that the real reason behind this situation rests in the fact that Kosovo is not yet able to be party to the international and regional human rights treaties due to the political obstacles to becoming a full member of Council of Europe, and more particularly of the United Nations.

Therefore the main argument of this paper is that the concept specified in ICESCR on the need “to achieve progressively” socio-economic rights, gives enough room to Kosovo’s institutions to include these instruments in its Constitution without free of any fear that it produces obligation for Kosovo to immediately implement all the rights specified in ICESCR; at the same time other ESC instrument, allow room for states acceding to it not to accept all articles immediately. Furthermore absence of membership to international and regional organizations it makes impossible for Kosovo to be part of the international and regional human rights treaties, including socio-economic ones. In order for Kosovo’s citizens

to file complaints to their mechanisms, the best option is to include socio-economic instruments as part of Kosovo's Constitution.

The very idea that human rights are universal, indivisible, interdependent and interrelated, (also enshrined in the Constitution of Kosovo), might be undermined if socio-economic human rights treaties are not considered as being of the same importance by the Constitution. This paper will also examine other problems in the field of human rights in Kosovo due to inability of Kosovo's citizens to lodge complaints to the international human rights mechanisms and its impact in the quality of all human rights, more particularly on socio-economic rights.

To support our argument, we will examine the case of Austria in the fourth chapter, and particularly the progressive implementation of the rights envisaged by these two instruments. Taking into consideration also the complex history of establishment of Austria and Kosovo as independent states, but particularly historical relationships and the role that Austria has played in promoting human rights in Kosovo, the comparison of two countries on this issue appears to be more logical and rational. Also the model of the welfare state promoted by Austria can serve as a model in dealing with socio-economic rights in Kosovo. In this paper, taking Austria as example will serve to better observe the importance of being part of international human rights mechanisms in improving socio-economic rights in domestic context.

---

## **1. Human Rights in World Stage: Civil and Political Rights vs. Socio-Economic Rights - an Imaginary Battle?**

---

### **1.1.Three generations of human rights**

In 1977, the Czech-French lawyer Karol Vasak introduced for the first time the idea of the three generations of human rights. Analyzing these rights according to their nature and the time they were established, he grouped civil and political rights as the right to life,

prohibition of torture, due process, the right to free expression, the right to assembly, etc, in the first generation of human rights.

The second generation of human rights is composed of economic, social and cultural rights as the right to work, right to education, right to health, right to social assistance, right to an adequate housing, right to an adequate standard of living etc. And the third generation of human rights known also as solidarity rights (or sometimes labeled as ‘new rights’) are the right to self-determination, right to development, right to peace, right to healthy environment, right to natural resources etc.<sup>1</sup> While the rights derived from the first two generations of human rights can be considered to be protected by ‘hard laws’ i.e. international and regional human rights treaties, the rights of the third generation of human rights are regarded as promoted by ‘soft laws’ such as declarations of UN General Assembly (i.e. The Declaration on the Right to Development). The only regional human rights treaty composed of the third generation human rights is the African Charter on Human and Peoples’ Rights.

According to Manfred Nowak, second generation rights represent a concept of social liberty to be achieved “through the state”, while classical civil rights guarantee the liberal freedom of the individual “from the state”, and political rights guarantee the democratic freedom of access “to the state”.<sup>2</sup> Even though it was not the intention of professor Vasak to establish a hierarchy of human rights, many debates have been focused since, whether one set of rights is more important than the others. In particular, the debate was focused on the role of the state in realizing human rights, taking into account general perception that civil and political rights are ‘negative’ and socio-economic rights are ‘positive’ rights. I will focus more in this topic in the section below.

---

<sup>1</sup> Karel Vasak, *Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights*, UNESCO Courier 30:11, Paris: United Nations Educational, Scientific and Cultural Organization, November 1977.

<sup>2</sup> Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary (2<sup>nd</sup> revised edition)*, N.P.Engel, Publisher, 2005.

The trend is now shifting from the idea of having a certain hierarchy among generations of human rights, to the concept that all human rights are equal. Furthermore according to the Vienna Declaration and Program of Action in 1993 they are universal, indivisible, interdependent and interrelated.<sup>3</sup> According to Nowak State parties to international human rights treaties have the *obligation to respect, protect and fulfill human rights*. This shift from “three generation concept” to “trias of State obligations”, according to him is based on the concept of universality and indivisibility of all human rights.<sup>4</sup>

## 1.2.Debates about supremacy of a given set of human rights

Human rights have played an immense importance in many developments in the modern world. As Richard Falk rightly stressed, it is impossible to imagine ‘three epic transitional struggles’ as were the struggle against colonialism, against Soviet Block oppression and against apartheid without the major impact the human rights had in those struggles.<sup>5</sup> Therefore after the end of the Cold War they became “ideologically hegemonic in international society”.<sup>6</sup>

Only recently there is a serious tendency to shift from the paradigm of the hierarchy of “generations of human rights”, and “negative vs positive rights”<sup>7</sup> and of the idea that socio-economic

---

<sup>3</sup> World Conference on Human Rights: Vienna Declaration and Programme of Action, UN doc. A/CONF.157/23, Part I, para. 5.

<sup>4</sup> Nowak, *CCPR Commentary*, pp.xx-xxi. Also see Manfred Nowak, *Introduction to the International Human Rights Regime*, Leiden/Boston, 2003, pp. 23, 44, as cited by Nowak, *CCPR Commentary*, p.XXI, note 3.

<sup>5</sup> Richard A. Falk, *Human Rights in Horizon: The Pursuit of Justice in a Globalizing World*. Routledge, 2000, p.4.

<sup>6</sup> Jack Donnelly, *The Relative Universality of Human Rights*, *Human Rights Quarterly*, Vol.29. No.2, 2007, p.282.

<sup>7</sup> The debate about positive and negative rights has been influenced since 1958 by the Isaiah Berlin’s essay “Two Concepts of Liberty. About his view see Isaiah Berlin, “Dy konceptime të lirisë (Two Concepts of Liberty),” in Isaiah Berlin, Idetë filozofike të shekullit XX dhe katër ese për lirinë (*Four Essays on Liberty*), Onufri, 1996 (translated into Albanian by Bashkim Shehu), pp.201-258. On the same issue as well as generally about the history of human rights in Albanian language

rights have problems to be enforced in the court of law compared to civil and political rights, which have been considered justiciable. Since fifty years, in academic circles and policy maker levels, debates and disputes about primacy of one set of rights upon the other have been alive and time to time even heated. Even now, despite serious developments in international and regional level, as we will see below (case law of the ECSR, case law of ECtHR, and particularly after the adoption of the Optional Protocol to the ICESCR in 2013 which introduced the complaint mechanism), the main discourse yet prevailing is a stronger emphasis on civil and political rights and a kind of negligence of socio-economic rights. Despite the decline of this negligence, which will further empower the justiciability of socio-economic rights in the future, and despite the change of discourse, which considers both sets of rights as equal, a brief look to the case law of the ECtHR, HRC, but also to domestic jurisprudences of different states, shows that there is still a prevalence of the civil and political rights comparing to socio-economic ones. Thus, civil and political rights have attracted more attention in the theoretical and practical level than economic, social and cultural rights.<sup>8</sup> As Bausaheb Ubale aptly stressed: "Society blames the state when someone is tortured, but impersonal economic or developmental forces (or the victims themselves) when thousands starve or are uprooted."<sup>9</sup> Also it was widely accepted, particularly until the fall of socialism in Europe in 1989-90 that civil and political rights have been more supported by Western liberal democracies while Communist states and the Third World states mostly put stress on socio-economic rights, with latter also focusing in supporting the third generation of rights, and most notably 'the right to development'.<sup>10</sup>

---

literature see Zejnullah Gruda, *Mbrotja Ndërkombëtare e të Drejtave të Njeriut* (*International Protection of Human Rights*). Universiteti Fama, 2007, pp.3-12. Ejup Statovci, *Të drejtat, liritë e njeriut dhe sklavërimi* (*Human Rights, Liberties and Slavery*). Bota e Re, 1999, pp.196-214.

<sup>8</sup> About this debate see Christian Tomuschat, *Human Rights: Between Idealism and Realism*. Oxford University Press, 2003, pp.26-28, 46-48.

<sup>9</sup> Bausaheb Ubale, "Human Rights, Poverty and Development", *Development Express*, No.1, 1999/2000, p.4, see [www.acdi-cida.gc.ca](http://www.acdi-cida.gc.ca)

<sup>10</sup> See Falk, *Human Rights in Horizon*, pp.7-8.

This was true particularly until the end of the Cold War, while nowadays the battle about the supremacy of certain rights tends to be focused more within the paradigm “rest against the West”, even taking notes of universalism v. cultural relativism.

Political and civic rights are treated more as negative rights because it is considered that these rights (but particularly traditional civil rights i.e. prohibition of torture, the right to life, right to private life etc.) limit the interference of the state in the everyday life of individuals. Therefore the traditional idea is that they are automatically implemented with the precondition that state does not intervene to violate civil liberties and hinder political rights. These rights are considered ‘legal’, ‘absolute’ and ‘immediate’ as well, because they are clearly defined and easy enforced by law. For that reason they are considered as ‘justiciable’, as Whelan and Donnelly explained ‘meaning capable of being formulated to impose strict, judicially enforceable obligations in national law’<sup>11</sup>. Conversely, the economic, social and cultural rights involve much more the state as an actor that protects, promotes and advances such rights. Therefore in order for economic, social and cultural rights to be realized state should intervene through different positive measures. The economic, social and cultural rights mostly deal with vulnerable groups of the population, such as poor, handicapped and indigenous people. Since they need the interference of state to be implemented, critics claim that they cost too much to the state.<sup>12</sup>

The economic, social and cultural rights are also treated as programmatic rights, which need to be implemented progressively and

---

<sup>11</sup> Daniel J.Whelan and Jack Donnelly, “The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight”, *Human Rights Quarterly*, Vol.29, No.4, 2007, pp.932-933.

<sup>12</sup> Asbjørn Eide and Allan Rosas, “Economic, Social and Cultural Rights: A Universal Challenge”, in Asbjørn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*. Second Revised Edition. Martinus Nijhoff Publishers, 2001, p.5, about deeper discussion in this topic see, Asbjørn Eide, “Economic, Social and Cultural Rights as Human Rights”, in Eide *et al* (eds.), *Economic, Social and Cultural Rights*, pp.9-28.

without clear obligation to be enforced by the law.<sup>13</sup> According to Martin Scheinin “the problem relating to the legal nature of social and economic rights does not relate to their validity but rather to their applicability. Many authors are of the opinion that economic and social rights, because of their very nature, are not ‘justiciable’ in the sense that they are not capable of being invoked in courts of law and applied by judges.”<sup>14</sup> As Christian Tomuschat pointed out “it is obvious that judicial or quasi-judicial procedures are not well suited for the vindication of economic, social, and cultural rights”<sup>15</sup>. There are authors that argued that socio-economic rights are not a matter of courts but rather of political decisions on how to distribute scarce financial and natural recourses. In this line Vierdag pointed out that “implementation of these provisions (in the ICESCR) is a political matter, not a matter of law since a Court must engage in prioritization of resources by putting a person either in or out of a job, a house or school”<sup>16</sup>. Cass Sunstein in 1993 was against inclusion of the socio-economic rights in the new constitution of the post-communist states stressing that social rights were ‘absurd’, that ‘governments should not be compelled to interfere with free markets’ and ‘many positive rights are unenforceable by courts since they lack the bureaucratic and policy tools’.<sup>17</sup> It is worth mentioning that after the Grootboom decision in South Africa in 2000, Sunstein took an opposite view.

---

<sup>13</sup> Henry J. Steiner and Philip Alston, *International Human Rights In Context: Law, Politics, Morals*. Oxford University Press, 2000, pp.245-249, 260-261; about differences and similarities of political and civil rights in one hand and economic, social and cultural rights in the other see as well Mathew Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development*. Oxford: Clarendon Press, 1995., pp.6-16.

<sup>14</sup> Martin Scheinin, “Economic and Social Rights as Legal Rights,” in Eide *et al* (eds.), *Economic, Social and Cultural Rights*, p.29.

<sup>15</sup> See Tomuschat, *Human Rights*, p.47.

<sup>16</sup> E.W.Vierdag, “The Legal Nature of the Rights Granted by the International Covenant on Economic, Social and Cultural Rights”. *Netherlands Yearbook of International Law*, Vol.IX, 1978, pp.69-105, at 103.

<sup>17</sup> See Cass Sunstein, “Against Positive Rights: Why Social and Economic Rights Don’t Belong in the New Constitutions of Post-Communist Europe”. *East European Constitutional Review*, Vol.2, Winter, 1993, pp.35-38.

However recently there is a growing number of the jurisprudence in the field of socio-economic rights. As Malcolm Langford observes courts have ordered reconnection of water supplies, the halting of forced evictions, the provision of medical treatments, the reinstatement of social security benefits, the enrolment of poor children and minorities in schools, and development and improvement of State programmes to address homelessness, endemic diseases and starvation.<sup>18</sup> In a number of countries as in Germany, South Africa and Canada courts have even revised laws that breached certain socio-economic rights in order to make them constitutional.<sup>19</sup> As a result, as Langford pointed out, nowadays the debate is more focused on the degree of justiciability rather than if socio-economic rights are justiciable or not.<sup>20</sup> Now even a lot of traditional civil rights are not any more viewed as pure negative rights, i.e. the right to a fair trial can be also considered as positive right since it requires a significant expenditure of state resources on courts, prison systems and legal aids. On the other hand socio-economic rights as protection of the freedom of association of trade unions and their members, prohibition of forced labor or unjust dismissal or guaranteeing non-discrimination in access to education or health services could be considered as immediately applicable and capable of judicial application and supervision.<sup>21</sup> It is true that the socio-economic rights require greater public investment compare to civil and political rights, but as Langford have rightly pointed out “it is a matter of degree rather of substance”<sup>22</sup>

Therefore, as it is pointed out latter, it is impossible to approach both sets of rights in a white and black manner. All human rights are interconnected, interdependent and interrelated and they do not

---

<sup>18</sup> See Malcolm Langford, “The Justiciability of Social Rights: From Practice to Theory”, in Malcolm Langford (ed.), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*. Cambridge University Press, 2008, p.3.

<sup>19</sup> See Kent Roach, “The Challenges of Crafting Remedies for Violations of Socio-economic Rights”, in Langford (ed.), *Social Rights Jurisprudence* p.55.

<sup>20</sup> Langford, The Justiciability p.29.

<sup>21</sup> See Ben Saul, David Kinley and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials*. Oxford University Press, 2014, p.1.

<sup>22</sup> Langford, The Justiciability p.31.

exclude each other, more so they complete each other.<sup>23</sup> As Flavia Piovesan points out: “The idea that social rights are non-actionable is purely ideological and not scientific: they stand out as authentic and genuine fundamental rights that are actionable, demandable and that require serious and responsible observance.”<sup>24</sup>

It is a kind of consensus among scholars and policy makers that most radical proponents of the clear division between two sets of rights came from the US and their political establishment. So general perception is that human rights in US and to some extent in Great Britain, can be considered only those sets of rights and civil liberties which according to their view are undisputedly justiciable, and may be implemented only when government does not intervene in the private realm of the individual life; at the same time they do not consider as rights, those where government should intervene *inter alia* with financial and positive measures. However there are authors who consider these kinds of assumptions as “myths”, arguing that socio-economic rights and the very idea of “welfare state” are at the core of the western societies, not excluding here Anglo-Saxon world.<sup>25</sup> On the other hand, as Micheline Ishay argues, the role of socialist thought and struggle, also developed in European soil, is undeniable when it comes to the socio-economic rights.<sup>26</sup>

However, it is a fact that there are increasing divergences even within American political life when it comes to the introduction and implementation of the certain national policies and laws related to socio-economic rights. Therefore, despite recent attempts of the Obama administration to reform the health system through

---

<sup>23</sup> Craven, *The International Covenant on Economic, Social and Cultural Rights*, pp.7-16; on these issue see also Amrtya Sen, *Development as Freedom*. New York: Anchor Books, 1999, pp.146-159; see also Micheline R. Ishay *The History of Human Rights: From Ancient Times to the Globalization Era*. University of California Press, 2004, pp.135-172, 225-229.

<sup>24</sup> Flavia Piovesan, “Social, Economic and Cultural Rights and Civil and Political Rights”, *SUR International Journal on Human Rights*, Year 1, No.1, 1-st Semester, 2004 p.26

<sup>25</sup> See for these discussion Whelan and Donelly, *The West, Economic and Social Rights*, pp.908-949.

<sup>26</sup> Ishay, *The History*, pp.9-10.

introduction of the Obamacare health insurance scheme in the beginning of 2014, which provides for millions of Americans that have not been covered by health insurance companies, conservative republicans are very eager to block further reforms towards securing universal health care and other economic and social rights. Furthermore, it should be stated that US is the only big and consolidated democracy that has not ratified ICESCR. However it should be said that both the recent US administration and the previous ones engaged in efforts to upgrade economic and social rights. Most notable was Franklin Roosevelt's project for the Second Bill of Rights that aimed to incorporate basic socio-economic rights. Even though his project was never accomplished, also because of his death, it is important to note what he said in his State of Union Message to Congress in 1944:

...This Republic had its beginning, and grew to its present strength, under the protection of certain inalienable political rights—among them the right of free speech, free press, free worship, trial by jury, freedom from unreasonable searches and seizures. They were our rights to life and liberty.

As our Nation has grown in size and stature, however—as our industrial economy expanded—these political rights proved inadequate to assure us equality in the pursuit of happiness. We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. "Necessitous men are not free men." People who are hungry and out of a job are the stuff of which dictatorships are made.

In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all regardless of station, race, or creed. Among these are:

- The right to a useful and remunerative job in the industries or shops or farms or mines of the Nation;
- The right to earn enough to provide adequate food and clothing and recreation;
- The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;
- The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad;

- The right of every family to a decent home;
- The right to adequate medical care and the opportunity to achieve and enjoy good health;
- The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment;
- The right to a good education.

All of these rights spell security. And after this war is won we must be prepared to move forward, in the implementation of these rights, to new goals of human happiness and well-being. America's own rightful place in the world depends in large part upon how fully these and similar rights have been carried into practice for our citizens. For unless there is security here at home there cannot be lasting peace in the world....<sup>27</sup>

### **1.3. Complementarities of different generations of human rights**

To illustrate the resemblance between the two sets of rights we will briefly examine trade union rights and property rights. These rights are very difficult to classify as belonging to the civil and political rights or to socio-economic rights.<sup>28</sup> More or less in the same line are arguments of the United Nations Development Programme in its Human Development Report 2000, pointing out deep correlation between civil and political rights on one side and economic, social and cultural rights on the other. According to UNDP, the 'absence of civil and political rights can block access to social, economic and cultural rights.'<sup>29</sup> For example, without workers right to free association and expression, other labor rights can be inaccessible. This also applies for the birth registration, as without a birth certificate a person may be unable to gain access to education and health services even when these rights are available and guaranteed by the constitution.<sup>30</sup>

---

<sup>27</sup> See Franklin D. Roosevelt, State of the Union Message to the Congress, 11 January 1944, in [http://www.fdrlibrary.marist.edu/archives/address\\_text.html](http://www.fdrlibrary.marist.edu/archives/address_text.html).

<sup>28</sup> See, Eide and Rosas, Economic, Social and Cultural Rights, p.4.

<sup>29</sup> UNDP, *Human Development Report 2000: Human Rights and Human Development*, p.75; see in [www.undp.org](http://www.undp.org)

<sup>30</sup> Ibid.

It is of interest to state that also the right to adequate housing has been protected in connection to the prohibition of torture, specifically to inhuman and degrading treatment by European Court of Human Right in the case *Dulas vs.Turkey*.<sup>31</sup> Also there are links between positive obligation of state in relation to the right to adequate housing on one side and the right to property and domestic violence on the other.<sup>32</sup> According to Clements and Simmons even though ECtHR ‘recognizes that questions that concern the distribution of scarce resources are better addressed by individual governments’ it ‘does not of itself mean that the Strasbourg Court will cede jurisdiction to the executive’ when it comes to articulate socio-economic rights in its jurisprudence.<sup>33</sup> This is true particularly after one of its most important judgments, *Airey v.Ireland*:

(T)he mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no water-tight division separating that sphere from the field covered by the Convention.<sup>34</sup>

There are a growing number of cases that the Strasbourg Court interprets civil and political rights in the light of their relation to the different socio-economic rights. There are a number of cases when socio-economic rights as housing rights, health care, social security and social care have been reinstated by the ECtHR while relying on civil and political rights granted by the ECHR i.e. the prohibition of torture (Article 3) the right to fair trial (Article 6), the right to respect for private and family life (Article 8), prohibition of discrimination (Article 14), protection of property (Article 1 of the Protocol No.1 to

---

<sup>31</sup> See *Dulas v. Turkey*, App.No.25801/94, Eur.Ct.H.R. 60 (2001).

<sup>32</sup> See Giulia Paglione, “Domestic Violence and Housing Rights: A Reinterpretation of the Right to Housing”, *Human Rights Quarterly*, Vol.28, No.1, February 2006, pp.120-147.

<sup>33</sup> See Luke Clements and Alan Simmons, “European Court of Human Rights: Sympathetic Unease”, in Langford (ed.), *Social Rights Jurisprudence*, p.409.

<sup>34</sup> See *Airey v. Ireland*, App.No.6289/73, Eur.Ct.H.R. (1979), parag.26, p.12.

Convention) and even sometime the right to life (Article 2).<sup>35</sup> Regarding education even though article 2 of the Protocol No.1 provides that ‘no person shall be denied the right to education’, the Court in the Belgian Linguistic Case (No.2) stated that despite its negative formulation, the first sentence of this article guarantees a right, the right that is related mainly to the right of access to education facilities that already existed.<sup>36</sup> When it comes to implementation of the Court decisions, it is important to note that even if small in numbers, there are decisions that brought forth changes in laws following findings by the Court that there had been violations of the socio-economic rights.<sup>37</sup>

Also Professor Manfred Nowak argues that the practice of the Human Right Committee, which is responsible for monitoring of the ICCPR, clearly demonstrates that civil and political rights can be effectively guaranteed only by a combination of negative and positive obligations of States.<sup>38</sup> Therefore states when it comes to the right to life not only should be refrained from arbitrary killings by their security organs, but they are obliged to take positive measures to decrease infant mortality and avoid armed conflicts.<sup>39</sup> Also some of the basic socio-economic rights as the right to free primary education, and different rights stemming from the right to work are considered by many authors as justiciable.<sup>40</sup>

David Beetham in his accounts about relationships between the two sets of rights argues that there is no sense of having freedom of expression without means to communicate, or that the right to due process or the right to stand for elective office is without significance if legal protection and public office are accessible only to the wealthy. The most fundamental condition in order to exercise civil and political rights is that we should be alive. This for sure requires the means of

---

<sup>35</sup> See Clements and Simmons, European Court, pp.413-424.

<sup>36</sup> See *Belgian Linguistic Case (No.2)* 1 EHRR 252; App.No.1474/62; 1677/62; 1769/63; 1994/63; 2126/64. Also see *Ibid*, pp.425-425.

<sup>37</sup> *Ibid*, p.426.

<sup>38</sup> Nowak, CCPR *Commentary*, p.XXI

<sup>39</sup> *Ibid*. See also *Ibid*, (paras.3-11), pp.122-127

<sup>40</sup> See Whelan and Donnelly, *The West*, p.

subsistence, shelter, clean water, sanitation and basic health care.<sup>41</sup> He argued that violation of economic and social rights is damaging for democracy in three ways:

First, and most directly, it undermines the citizenship status of those whose rights are unprotected and their capacity to exercise their civil and political rights along with others. Social or economic exclusion and political exclusion go hand in hand. Secondly, it diminishes the quality of public life for all, through the loss of security to property and person, and the correspondingly intensified organization of repression. Finally, it erodes the legitimacy of democratic institutions, and makes them more vulnerable to subversion. Such effects can be expected to be the more pronounced the deeper and more widespread the absence of economic and social rights.<sup>42</sup>

However, despite all debates, disputes and neglects, economic and social rights have started to gradually gain ground at all levels. Economic, social and cultural rights have been part of international human rights law not only internationally, but regionally as well. European Social Charter, Additional Protocol to the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights are some of main regional documents that contain provisions about economic, social and cultural rights. These documents are being supplemented by growing case-law of ECtHR but also of ACtHR that are related to different socio-economic rights. Moreover, two sets of rights have been put together in one joined international document, which is The Convention on the Rights of the Child adopted in 1989.<sup>43</sup> Also it should be stated the UDHR together with ICCPR and ICESCR form what is known in international law as *International Bill of Human Rights*.<sup>44</sup>

---

<sup>41</sup> David Beetham, *Democracy and Human Rights*. Polity Press, 1999, p.97.

<sup>42</sup> Ibid, p.102

<sup>43</sup> Eide and Rosas, Economic, Social and Cultural Rights, p.4.

<sup>44</sup> See Nowak, *CCPR Commentary*, p.xix.

It is going to be very interesting to see the upcoming case law of the Committee on Economic, Social and Cultural Rights, after the adoption on 5 May 2013 of the Optional Protocol to the ICESCR. This protocol entitles the Committee to receive individual and collective complaints regarding the violation of rights granted to the ICESCR. This new and significant development will give new impetus to the whole debate about the concepts of ‘positive’ and ‘negative’ rights, as well as the justiciability of the socio-economic rights. Most probably with establishing of the complaint procedure, we are entering unavoidably in the new era when it comes to the interpretation of the socio-economic rights which will irreversibly make these rights finally to be accepted by all actors (states, international courts, academicians etc.) as justiciable.<sup>45</sup>

## **2. Socio-Economic Rights in International Human Rights Instruments**

### **2.1.The Universal Declaration on Human Rights and economic, social and cultural rights**

The Universal Declaration on Human Rights (UDHR) recognizes two sets of rights: political and civil rights, considered as traditional and classical and economic, social and cultural rights considered as new one, imposed by new conditions in the international scene after World War Two.<sup>46</sup> Even though the UDHR is considered as promoting more civil and political rights, it is important that this document have not disregarded the economic, social and cultural

---

<sup>45</sup> More about this important development see in See Eibe Riedel, Gilles Giacca and Christophe Golay, “The Development of Economic, Social, and Cultural Rights in International Law”, in Eibe Riedel, Gilles Giacca and Christophe Golay, (eds.), *Economic, Social, and Cultural Rights in International Law: Contemporary Issues and Challenges*. Oxford University Press, 2014, p.4. On the same issue see also Saul et al, *The International Covenant on Economic*, p.3, 8-9.

<sup>46</sup> See Steiner and Alston, *International Human Rights In Context*, p.237.

rights and it sets up conditions for future advancement of these rights.<sup>47</sup>

While some of the civil and political rights as prohibition of arbitrary killings, prohibition of torture, prohibition of slavery, prohibition of discrimination, etc., are considered as peremptory norms (*jus cogens*) of general international law, some socio-economic rights set in UDHR, as right to freely choose the work, the right to form trade unions, the right to adequate housing, the right to free primary education etc., according to Hurst Hannum are potential candidates to become part of the customary international law.<sup>48</sup> Therefore UDHR played a huge role in promoting the idea of universality of human rights among different societies, cultures, religions, nations and states. As Donnelly rightly stated “Not only do few states today directly challenge international human rights, a surprisingly small number even seriously contend that large parts of the UDHR do not apply to them.”<sup>49</sup>

In UDHR the first article that contains elements of economic and social rights, is article 17 that deals with the right to own property.<sup>50</sup> So, according to this article: “Everyone has the right to own property alone as well as in association with others. No one shall be deprived of

---

<sup>47</sup> See See Riedel et al, *The Development of Economic*, p.6.

<sup>48</sup> About *jus cogens* in the international law of human rights see Lauri Hannikainen, *Peremptory Norms (Jus Cogens) in International Law: Historical Development, Criteria, Present Status*, Helsinki: Lakiemiesliton Kustannus, 1988, pp.425-520. See also General Comment 29 on article 4 (State of Emergency), para.11, approved on 24 July 2001, CCPR/C/21/Rev.1/Add.11, 31 August 2001, Gentian Zyberi, *E Drejta Ndërkombëtare e të Drejtave të Njeriut (International Law of Human Rights)*, Botimet Art, 2011, pp.98-102. About the relation of socio-economic rights to the customary international law see Hurst Hannum, “The Status of the Universal Declaration of Human Rights in National and International Law”, 25 *Georgia Journal of International and Comparative Law*, 1995-1996, p.349.

<sup>49</sup> Donnelly, “The Relative Universality of Human Rights”, p.282. About the debates about universality of the human rights see also Christian Tomuschat, *Human Rights*, pp.58-83.

<sup>50</sup> About debates whether this right is civil and political right or it is economic and social right, or it is both, see Catarina Krause, “The Right to Property”, in Eide et al (eds.), *Economic, Social and Cultural Rights*, pp.169-190.

his property”.<sup>51</sup> Article 22 deals with the right to social security<sup>52</sup> and entitled everyone for the first time in this declaration with the economic, social and cultural rights: “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality”.<sup>53</sup>

Articles 23, 25 and 26 are clearer in promoting economic and social rights, but these articles also implicitly promote the right to development, which in other hand sets up conditions for eradication of poverty. Article 23 promotes among others the right to work, equal pay for equal work and the right to form and to join trade unions<sup>54</sup>:

- Everyone has the right to work, free choice of employment, to just and favorable conditions of work and to protection against unemployment.
- Everyone, without any discrimination, has the right to equal pay for equal work.
- Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- Everyone has the right to form and to join trade unions for the protection of his interests.<sup>55</sup>

Paragraph 1 of Article 25 provides that: “Everyone has the right to a standard of living adequate for the health and well-being of himself

---

<sup>51</sup> Article 17, paragraph 1 and 2 of the Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

<sup>52</sup> More about the social security, its history and its relationships with the human rights and particularly with the economic, social and cultural rights, see in Martin Scheinin, “The Right to Social Security”, in Eide et al (eds.), *Economic, Social and Cultural Rights*, pp. 211-221.

<sup>53</sup> Article 22, UDHR.

<sup>54</sup> More about the right to work and the rights in work and its relation with the human rights, see Krysztof Drzewicki, “The Right to Work and Rights in Work”, in Eide, et al (eds.), *Economic, Social and Cultural Rights*, pp. 223-243.

<sup>55</sup> Article 23, UDHR.

and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”<sup>56</sup>.

Article 26 is dealing with the right to education. “Everyone has the right to education. Education shall be free, at least in the elementary stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit”<sup>57</sup>.

Even though these rights do not explicitly see the right to development as part of the economic, social and cultural rights, they laid down the road for establishing this right at a later stage. Moreover, in order to improve the economic situation, to have sustainable development and to eradicate poverty, it is one of the basic conditions for one country to implement the rights to health, food, education, social protection, work, housing etc.<sup>58</sup> Therefore one can argue also that in UDHR implicitly have been laid down the road to the third generation of the human rights.

## **2.2. International Covenant on Economic, Social and Cultural Rights as primary source for promoting, protecting and implementing of economic, social and cultural rights**

UDHR, adopted in 1948, served as a good foundation based on which after a long period of time and many disputes and debates, were drafted two Covenants: International Covenant on Civil and Political

---

<sup>56</sup> Ibid, Article 25, paragraph 1. About the right to health see Brigit Toebes, “The Right to Health”, in Eide et al (eds.), *Economic, Social and Cultural Rights*, pp. 169-190; also more for the right to an adequate standard of living see Asbjorn Eide, “The Right to an Adequate Standard of Living Including the Right to Food”, in Eide et al (eds.), *Economic, Social and Cultural Rights*, pp. 133-148.

<sup>57</sup> Ibid, Article 26, paragraph 1.

<sup>58</sup> See Riedel et al, The Development of Economic, p.3. On this issue see also an outstanding analysis by Amartya Sen in *Development as Freedom*, pp.40-46; about the right to education and its relation with human rights and development see Manfred Novak, “The Right to Education”, in Eide et al (eds.), *Economic, Social and Cultural Rights*, pp.245-271.

Rights and International Covenant on Economic, Social and Cultural Rights, both drafted in 1966 and becoming effective in 1976.<sup>59</sup> These two Covenants establish legal obligations to which States bind themselves<sup>60</sup>, if they ratify these Covenants<sup>61</sup>.

As discussed above about the disputes and debates present today on the issue of the two sets of rights, we will examine here only ICESCR because of its relevance to the topic observed.

ICESCR tackles economic, social and cultural rights in more detail and more explicitly than other documents before it. These rights laid down conditions for the engendering of the right to development and furthermore, for the eradication of poverty, as rights of the third generation. It is one of the most important documents in the field of human rights protection that serves as a foundation for all efforts to set up a new environment free of poverty and underdevelopment, free of illiteracy, child and female abuse, and where everyone will have the right to work, to social security and to health care.<sup>62</sup> Saul et al rightly pointed out the ‘connection between socio-economic rights and development means that these rights must be understood in the context of international work to promote development and alleviate poverty’ stating in this regard UN Guiding Principles on Extreme Poverty and Human Rights as well as the work of the UNDP an important step in the right direction.<sup>63</sup> It is important to note that adoption of the Optional Protocol to the ICESCR in 2013, which established complaint and inquiry mechanisms, is a very important development in the field of socio-economic rights and their empowerment in the legal and international law.

---

<sup>59</sup> See also Craven, *The International Covenant on Economic, Social and Cultural Rights*, pp.16-22 and Malcolm Langford and Jeff A.King, “Committee on Economic, Social and Cultural Rights: Past, Present and Future”, in in Malcolm Langford (ed.), *Social Rights Jurisprudence*, p.477.

<sup>60</sup>Ibid, p.7

<sup>61</sup> Up until now (August of 2014) 168 states are parties to ICCPR and 162 to ICESR (see [www.treaties.un.org](http://www.treaties.un.org)). Among states that have not ratified ICESR are Botswana, Saudi Arabia, Malaysia, Qatar, United Arab Emirates, Mozambique, South Africa and the United States.

<sup>62</sup> More about the specific rights granted in the ICESCR and their interpretation see in Riedel et al, *The Development of Economic*, pp.8-18.

<sup>63</sup> See Saul et al, *The International Covenant on Economic*, p.8.

### **2.2.1. Basic economic, social and cultural rights guaranteed by ICESCR**

First paragraph of the first article provides that: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”.<sup>64</sup> The right to self-determination entails other rights related to it. Since peoples have the right to self-determination, they “may, for their own ends, freely dispose of their natural wealth and resources”<sup>65</sup>.

Whereas the right to work, the right to equal pay for equal work and the right to form and to join trade unions all were comprised under Article 23 of UDHR, in ICESCR, all these topics are regulated in three different articles - 6, 7 and 8. They are broader and deeper than the ones in UDHR and they entail more rights in mentioned fields. So, whereas in the UDHR everyone has the right to work, in the ICESCR it is specified that it is the state’s duty to recognize this right, as well as to provide conditions for the training programmes, which will help in the realization of the right to work.<sup>66</sup> Article 7 that treats the problems of conditions of work, apart from mentioning that everyone is entitled to equal payment for equal work, it also states that women must be equal with the men, that working conditions have to be safe and healthy, that everyone has to have equal opportunity to be promoted, that everyone that gets paid has the right for decent living for themselves and their families, etc.<sup>67</sup> In article 8, which deals with the right to form and to join trade unions, additional right that is not mentioned in UDHR is the right to strike.<sup>68</sup> Social security and social insurance is guaranteed under article 9.<sup>69</sup>

---

<sup>64</sup> Article 1, Paragraph 1 of the International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No.16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan.3, 1976.

<sup>65</sup> Ibid, Article 1, Paragraph 2.

<sup>66</sup> Ibid, Article 6, parag.1 and 2.

<sup>67</sup> Ibid, Article 7.

<sup>68</sup> Ibid, Article, 8, parag.1(d).

<sup>69</sup> Ibid, Article 9.

Since today it is impossible to detach the fight against poverty from socio-economic rights, there are provisions in this Covenant, which deal with the freedom from want:

The State Parties to the present Covenant recognize the fundamental right of everyone to be free from hunger shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:

- a) to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems is a such way as to achieve the most efficient development and utilization of natural resources;
- b) taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.<sup>70</sup>

As crucial parts of economic, social and cultural rights the right to health care and the right to education are also regulated through this Covenant. In the ICESCR these rights are regulated in the article 12, respectively in the article 13. These two articles also are broader and deeper than the ones in the UDHR, and examine these rights in more detail. It is important to note that the right to higher education is recommended to be free as well. Also fundamental education is encouraged for all persons, who have not received it.<sup>71</sup>

## **2.2.2 Applicability of economic, social and cultural rights in domestic legal systems**

A right can be viewed also as an entitlement. Specifically to have a right is to be accorded the necessary freedom to pursue some chosen end. However to have a right specified in documents is not sufficient and doesn't mean that one can enjoy that right. Thus the

---

<sup>70</sup> Ibid, Article 11, parag.2.

<sup>71</sup> Ibid Article 13, parag.2.

language of a given right is limited to the extent of its realization. Consequently all rights need to have duty-holders that are obliged to realize these rights. James W. Nickel argues that the right to food will not be meaningful if it does not yield guidance as to who has the responsibility for ensuring that adequate food is available. In the same line Henry Shue argues that seriousness about rights leads to seriousness about duties and, moreover that seriousness about duties opens up the underlying social character of rights.<sup>72</sup>

Since all rights require the existence of some duty-holders, the primary responsibility for the realization of these rights rests with the state in which the persons concerned live. Even though duties and obligations are not specified in detail in the main international human rights instruments, these duties and obligations have been spelled out through additional, more specific instruments and through practice of monitoring bodies. International mechanisms through which groups or persons can realize the rights that have been violated by the state or can complain about these violations are often inaccessible to disadvantaged groups. They are forced to rely exclusively on the legal remedies and institutions existing within their country in order to defend and promote their rights. Under the present international law, obligations for human rights are primarily a responsibility of the states. As it was already pointed out human rights impose three types or levels of obligations on State Parties: the obligations to respect, to protect and to fulfill.<sup>73</sup>

As can be seen from elaborations above the debate whether socio-economic rights are justiciable is more or less nearing its end. The debate is now more often focused on how to consolidate these rights in domestic legislation and possibly even in the constitutions in order to bring about clearer conditions for judges to enforce them. Jeff

---

<sup>72</sup> See Fiona Robinson, "Beyond Rights and Duties: Building Attachments and Focusing Moral Attention on World Poverty", in Sarah Owen Vandersluis and Paris Yeros (eds.), *Poverty in World Politics*. Macmillan Press in association with Millennium: Journal of International Studies, 2000, pp.35-58.

<sup>73</sup> Sandra Liebenberg, "The Protection of Economic and Social Rights in Domestic Legal System", in Eide et al (eds.), *Economic, Social and Cultural Rights*, p.55; See also Eide, Economic, Social and Cultural Rights as Human Rights, pp.20-23.

King argues that there are large ‘numbers of countries that have adopted the bill of social rights without any great reduction in inequality’, while ‘all countries that provide the best current legislative protection of social rights did so without constitutional bills of social rights.’<sup>74</sup> However, there is a growing trend to make these rights part of the constitutions. As Katharine Young argued after the Second World War, ‘economic and social rights enjoy constitutional status in countries in Africa, Asia, Europe, and Latin America, in sub-national units in North America and elsewhere, and in regional and international human rights instruments.’<sup>75</sup> While addressing this issue she mentioned that rights that have been incorporated into the constitutions are rights to access food, water, housing, preventive or curative healthcare, social security, education, labor protection, basic services in sanitation or electricity and new forms of property.<sup>76</sup> Thus, arguing on this issue she stated that even without establishing rights into the constitution a state may constitute them, pointing out that to ‘constitute rights’ is ‘to make them effective within a legal system’ and also to ‘socially institute, so that the commitments are translated into social understanding, and are realized effectively in law’.<sup>77</sup>

Under Article 2 of the ICESCR, State Parties have undertaken legally binding obligations to take steps to the maximum of their available resources to ‘achieve progressively’ the full realization of the economic and social rights in that Covenant. The phrase ‘achieve progressively’ so often used in the heated debates has many times been misinterpreted and misunderstood. To clarify the meaning of these phrases and generally of the Article 2 of the ICESCR, which is so important regarding the implementation of Covenants by the states, Committee on Economic, Social and Cultural Rights has so far issued two documents relating to this issue (General Comment No.3 and No. 9):

---

<sup>74</sup> See Jeff King, *Judging Social Rights*. Cambridge University Press, 2012, p.3.

<sup>75</sup> See Katharine G. Young, *Constituting Economic and Social Rights*. Oxford University Press, 2012, p.2.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid, p.6.

The fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d'être*, of the Covenant, which is to establish clear obligations for State parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberate retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.<sup>78</sup>

According to the General Comment NO.9, which was made to further clarify and specify Article 2 of the Covenant, “Covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place”.<sup>79</sup>

There are several mechanisms through which economic, social and cultural rights could be protected, implemented and incorporated into domestic legal system. These mechanisms are: the incorporation and protection of economic, social and cultural rights through constitutional provisions, particularly the entrenchment of a chapter or Bill of Rights in a country's constitution; the incorporation and protection of these rights through domestic legislation; protection and implementation through accessible and effective judicial and

---

<sup>78</sup> Committee on Economic, Social and Cultural Rights, General Comment NO.3 (Fifth session, 1990), Report of the Committee on Economic, Social and Cultural Rights, UN doc. E/1991/23, pp.83-87, par. 9

<sup>79</sup> CESCR, General Comment NO.9 (Nineteenth session, 1998), Report of the Committee on Economic, Social and Cultural Rights, UN doc. E/1999/22, pp.117-121, par.2

administrative remedies for redressing violations of the rights; and the protection of these rights through other appropriate national institutions such as human rights commission, ombudsman offices, public interest groups or other human rights advocates.<sup>80</sup>

According to articles 16 and 17 of ICESCR, states have been required to submit reports, at intervals to be defined by Economic and Social Council of UN, on the ‘measures, which they have adopted’ and the ‘progress made’ in achieving observance of the rights in the Covenant. However, due to the huge work of ECOSOC these reports were not regularly observed. In order to improve the situation in this field ECOSOC created an independent body of experts that in 1985 was transformed into a body known as Committee on Economic, Social and Cultural Rights.<sup>81</sup> The Committee is one of the only institutions concerned exclusively with the economic, social and cultural rights. Even though it is not known as much as its ‘sister’ committee, the HRC, which supervises the realization of ICCPR, the Committee on Economic, Social and Cultural Rights did and still is doing a great job in setting up conditions for better understanding of economic, social and cultural rights, and gradually is establishing a proper environment which will help for better implementation of these rights into domestic legal systems of the states that ratified the ICESCR. This Committee, regularly observes the state reports, supervises the situation in the field of implementation and protection of rights, and submits general comments in order to clarify parts of ICESCR dealing with immediate implementation of certain economic, social and cultural rights etc.<sup>82</sup> Consequently, this Committee is helping in fostering and augmenting these rights to become every day more and more part of the legal systems of the national states. Nevertheless *up till now have been* considered that the full implementation of the Covenant will be impossible without additional

---

<sup>80</sup> Liebenberg, The Protection of Economic and Social Rights, pp.55-84.

<sup>81</sup> All other UN human rights committees report directly to the General Assembly of UN, while the Committee on Economic, Social and Cultural Rights, which was introduced afterwards report to the ECOSOC.

<sup>82</sup> More about the activities of this Committee, see Langford and King, Committee on Economic, Social and Cultural Rights, pp.477-516.

protocol to the Covenant, which should have encouraged new implementation policies and would have established the possibility for individual and collective complaint system.<sup>83</sup> Finally, after much debates and delays on 5 May 2013 the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, became effective to establish the complaint and inquiry mechanisms and procedures. It was adopted by the UN General Assembly on 10 December 2008. As of June 2014, 15 states have become party to this document and 45 states have signed it.<sup>84</sup> In Article 2 this instrument provides that ‘communications may be submitted by or on behalf of individuals or groups of individuals, under jurisdiction of a State party, claiming to be victims of a violation of any of economic, social and cultural rights set forth in the Covenant by that State Party’.<sup>85</sup> Through its Article 10 it also provides for inter-state communications if ‘a State Party to the present Protocol may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant’.<sup>86</sup> If a State Party to the Protocol recognizes the competences of the Committee regarding inquiry procedures, the Committee may start these procedures, which may include also the visit to the territory of the State Party.<sup>87</sup>

This is a major breakthrough in empowering socio-economic rights in the domestic and international legal systems and in ending the debate about the justiciability of the socio-economic rights. Since we still lack the case law of the Committee on Economic, Social and

---

<sup>83</sup> See, Matthew Craven, “The UN Committee on Economic, Social and Cultural Rights, in Eide et al (eds.), *Economic, Social and Cultural Rights*, pp.455-472

<sup>84</sup> See for this information in

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3-a&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en) (last checked on 25.8.2014).

<sup>85</sup> See Article 2 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, GAUN Resolution A/RES/63/117, on 10 December 2008. This instrument can be found in

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3-a&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en)

<sup>86</sup> Ibid., Article 10.

<sup>87</sup> Ibid, Article 11.

Cultural Rights, we firmly believe that new paths have been opened for the people around the world to redress the violation of socio-economic rights not only through complaining to the Committee, but also relying on its future decisions regarding socio-economic rights when they will bring cases in front of domestic courts. This new development will have long-lasting influence also in creation of new mechanisms and institutions and also of new approach to the actual human rights instruments in the regional level too.

### **2.3. European Social Charter**

European Social Charter (hereinafter ESC will be used for the 1996 revised version) is one of the most important European documents dealing with economic and social rights and is for certain one of the deepest, broadest and most inclusive documents addressing these issues worldwide.<sup>88</sup> Parties that signed this charter accepted 31 basic rights and principles listed in section one of this Charter. These rights and principles deal mostly with the right to work, right to social security, right to social and medical assistance, right to housing, the right to protection against poverty, etc.<sup>89</sup> Up until now 43 out of 47 states of the Council of Europe (hereinafter CoE) have ratified either the older version of ESC (10 states) or the 1996 Revised ESC (33 states).<sup>90</sup>

According to the ESC each state party ought to select six out of nine main rights - as the right to work (article 1), the right to organize (article 5), the right to bargain collectively (article 6), the right of children and young person's to protection (article 7) the right

---

<sup>88</sup> See Regis Brillat, "The Supervisory Machinery of the European Social Charter: Recent Developments and their Impact", in Grainne de Burca and Bruno de Witte (eds.), *Social Rights in Europe*. Oxford University Press, 2005, pp. 31-32.

<sup>89</sup> European Social Charter (revised), Part 1, ETS, No.163, Strasbourg, 3.5.1996 (First version of European Social Charter was entered into force on 26.2.1965, ETS No.35)

<sup>90</sup> See in

[http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/Overview\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/Overview_en.asp) (last time it has been checked on 10.9.2014). States that have not ratified ESC are Switzerland, San Marino, Monaco and Liechtenstein..

to social security (article 12), the right to social and medical assistance (article 13), the right of family to social, legal and economic protection (article 16), the right of migrant workers and their families to protection and assistance (article 19), and the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (article 20) - in order to apply them in their domestic legislations. Additionally they should select to be bound to rights foreseen in sixteen articles out of thirty one in order to be considered party to the charter.<sup>91</sup> In this regard as Khaliq and Churchill rightly pointed out 'the ESC appears to be unique among human rights treaties in permitting its parties not to accept all the rights it contains. The reason for this is because of the considerable differences in the level of economic and social progress among members of CoE at the time the original Charter was being drafted'.<sup>92</sup>

It is important to note that unlike ICESCR, the rights granted in ESC generally are not progressive in their nature, but are of immediate effect. While many of the rights are drafted in a vague language, like other documents dealing with socio-economic rights, employment rights are drafted in sufficiently clear language as to be judicially enforced.<sup>93</sup>

However when it comes to the supervisory and implementation mechanisms, ESC differs significantly in comparison to the European Court of Human Rights (hereinafter ECtHR), which is a legal remedy, where citizens of state parties to the ECHR (comprising mostly of civil and political rights), can bring individual cases before the court. Furthermore the decisions of the ECtHR are obligatory for all state parties. On the other hand, the main supervisory body of the ESC is the European Committee of Social Rights (hereinafter ECSR), composed of fifteen experts, responsible to examine state reports (delivered every two years) in order to observe the compliance with

---

<sup>91</sup> ESC, Part III, article A, para.1.b and 1.c.

<sup>92</sup> Urfan Khaliq and Robin Churchill, "The European Committee of Social Rights: Putting Flesh on the Bare Bones of the European Social Charter", in Langford (ed.), *Social Rights*, p.429.

<sup>93</sup> Ibid, p. 430.

obligations undertaken by states under ESC. ECSR prepares at the end conclusions which are made public and sent to the Governmental Committee. Governmental Committee prepares decisions for the Committee of Ministers of CoE examining the reports of the ECSR and of contracting parties. The Committee of Ministers, based on the report of the Governmental Committee and by a majority of two-thirds of those voting, approves a resolution that covers the entire supervision cycle, but also contains individual recommendations to the Contracting Parties concerned.<sup>94</sup>

In contrast to ICESCR up until 2013, ESC through its Additional Protocol from 1995 established a mechanism of collective complaints. This has made ESC procedures much more legalistic compared to those of ICESR. Also the reform of the UN system initiated by the former UN Commission on Human Rights, more concretely the opportunities for individual and collective complaints stagnated<sup>95</sup> up until 2013, when the Optional Protocol to the ICESCR establishing complaint mechanisms entered into force. According to this Protocol the organizations that are entitled to submit complaints alleging unsatisfactory application of the ESC are:

- a) international organizations of employers and trade unions;
- b) other international non-governmental organizations which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee;
- c) representative national organizations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint<sup>96</sup>

In addition, the Contracting State, while expressing its consent to be bound by this Protocol, may also declare that it recognizes the right of any other representative national NGO within its jurisdiction, which has particular competence in the matters governed the ESC, to

---

<sup>94</sup> ESC, Part IV, articles 21-28.

<sup>95</sup> See Philip Aston, “Strengths and Weakness of the ESC’s Supervisory System”, in de Burca and de Witte (eds.), *Social Rights in Europe*, pp.47-49.

<sup>96</sup> See article 1 of the Additional Protocol to the European Social Charter, 1995.

lodge complaints against it.<sup>97</sup> The main body which examines these complaints is ECSR. After a lengthy examination of the complaint, where also ECSR may organize a hearing with the representatives of the parties, it shall draw up a report of the case and present conclusions whether or not the Contracting Parties concerned have ensured the satisfactory application of the provision of the ESC referred to in the complaint. This report with conclusions is then sent to the Committee of Ministers, the organization that lodged the complaint, to the Contracting Parties to the ESC, and to the Parliamentary Assembly. Based on this report, the Council of Ministers shall adopt a resolution by a majority of those voting, while if the ECSR finds that ESC has not been applied in a satisfactory manner, the Committee of Ministers shall adopt, by a majority of two-thirds of those voting, a recommendation addressed to the Contracting Parties concerned. On the other hand, Contracting Party concerned shall provide information on the measures it has taken to give effect to the Committee of Ministers' recommendation, in the next report it submits to the Secretary General of the CoE.<sup>98</sup> As pointed out by Philip Aston: "the collective complaints system represents an important development in the procedure and one which has the potential to transform the effectiveness of the ESC system as a whole."<sup>99</sup>

As can be seen, even though legal procedures under ESC lack the same strength as its counterpart ECHR, however the ECSR makes a legal assessment of the conformity of national situations with the original Charter, the 1998 Additional Protocol and the Revised ESC and it adopts conclusions in the framework of the reporting procedure and decisions under the collective complaints procedure. Thus ESCR makes legal rulings and its findings cannot be challenged. In most of the cases, governments have accepted these findings and made necessary changes in order to secure fulfillment of these decisions.<sup>100</sup>

---

<sup>97</sup> Ibid, article 2.

<sup>98</sup> Ibid, articles 3-8.

<sup>99</sup> Alston, *Strengths and Weaknesses*, p. 66.

<sup>100</sup> Brillat, *The Supervisory*, p.32-37.

Therefore, ESCR has played a vital role with its jurisprudence to consolidate some of the basic social freedoms in Europe, as the freedom to organize and freedom to work, which have paved the way for further advancement of socio-economic rights in Europe.<sup>101</sup> The number of complaints delivered to the ESCR has been increased in the course of the year, which is a good sign that system is working. So far, 109 collective complaints have been brought before ESCR with 15 only in 2013 that is the year with most complaints being put before ESCR.<sup>102</sup>

### **3. Socio-Economic Rights International Treaties in Kosovo: The History of Exclusion**

#### **3.1. Constitutional framework for provisional self-government and exclusion of socio-economic rights international treaties**

After huge public and political pressure during 2000 and 2001, UNMIK, considering that it is not in their mandate to establish a constitution for Kosovo, out of fear that it may implicate issues related to the political status of Kosovo, realized that a sort of a constitutional framework was needed to be established to regulate the operation of the Provisional Institutions of Self-Government in Kosovo. However there was a significant opposition among Albanian public opinion to this move, with most of them being in favour of having a constitution rather than a constitutional framework. As a result, this situation was characterized by the withdrawal of some of the Kosovo Albanian experts from the commission drafting the constitutional framework. Apart from this, the main opposition party at that time, the Kosovo Democratic Party refused to sign this document, even though

<sup>101</sup> See Jean François Akandji-Kombe, “The Material Impact of the Jurisprudence of the ESCR”, in de Burca and de Witte (eds.), *Social*, pp.100-105.

<sup>102</sup> See in

[http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp)  
(last time checked on 10.09.2014).

paradoxically it continued to work within its framework until the new Kosovo constitution was approved in June 2008. Nevertheless on 15 May 2001, SRSG promulgated the Regulation 2001/9, On a Constitutional Framework for Provisional Self-Government in Kosovo.

Under this constitutional framework, enacted through an UNMIK Regulation, Provisional Institutions of Self-Government were established.<sup>103</sup> In the years that followed much of the huge competences UNMIK left for itself were gradually transferred to Kosovo's institutions. These competences, known as powers and responsibilities reserved to the SRSG, in reality were so broad in their scope that made possible to control every field of the life in Kosovo. These powers triggered huge debates and quarrels between UNMIK on one side and PISG and public opinion on the other.<sup>104</sup>

This Regulation addresses human rights in its chapter 3. As it has become a tradition elsewhere in Europe in constitutional documents of late, article 3.2 makes the main international human rights documents part of the legal order. What was changed for worse, compared to Regulation 1999/24, was that the ICESCR was removed from being an obligatory document in Kosovo's legal order. This move was never explained neither by the international community in Kosovo nor by our legal experts and politicians that took part in drafting this regulation. There are two main assumptions, both of which may be true. The first one is that the international community was afraid of taking additional financial responsibilities in Kosovo that could have budgetary implications had the ICESCR become part of Kosovo's legislation. Another one is connected with workers' rights and the rights of the Kosovo's citizens over natural resources in Kosovo that were not taken into consideration when the process of the privatization started in Kosovo.<sup>105</sup> Even though this is specified by the

---

<sup>103</sup> See Article 1.2 Regulation 2001/9, On Constitutional Framework for Provisional Self-Government in Kosovo, 15 May 2001.

<sup>104</sup> About these powers and responsibilities see Ibid, Chapter 8.

<sup>105</sup> Blerim Reka, *UNMIK as an International Governance in Post-War Kosovo: NATO's Intervention, UN Administration and Kosovar Aspirations*, Shkup, Prishtinë, Tiranë, Logos-A, 2003, pp. 250, 251.

law on privatization, very few workers were able to get 20% of the payment made in the process of privatization by those who privatized companies. Furthermore many times the whole process was considered to lack transparency.<sup>106</sup> It is worth noting that both at international and regional level there is still lack of the jurisprudence related to the violation of the socio-economic rights in the processes of privatization (including the concept of privatization, the management contracts and public-private partnerships).<sup>107</sup> At least for the former it can be said that taking in consideration the progressive nature in realization of economic, social and cultural rights this should not have been the case.

Human rights were not prescribed in this constitutional framework in detail but were enforced through its article 3.3 merely stressing that “the provisions on rights and freedoms set forth in these instruments shall be directly applicable in Kosovo as part of this Constitutional Framework.”<sup>108</sup>

### **3.2. Human Rights in the Constitution of the Republic of Kosovo: a view to socio-economic rights**

Kosovo’s Constitution addresses human rights far more seriously than previous legal norms that regulated this field in Kosovo. In the second paragraph of the very first article it is stipulated that “the Republic of Kosovo exercises its authority based on the respect for human rights and freedoms of its citizens and all other individuals within its borders”.<sup>109</sup> The whole second chapter of the constitution is dedicated to the fundamental rights and freedoms. It states that all human rights and fundamental freedoms are indivisible, inalienable and inviolable, setting forth at least the basis for treating equally all

---

<sup>106</sup> See Albert Zogaj, Qerkin Berisha and Valon Murati, *Të Arriturat dhe të Metat e Sistemit Juridik të Kosovës: Të Drejtat e Njeriut dhe Integrimet Evropiane* (*The Achievements and Deficiencies of the Judicial System in Kosovo: Human Rights and European Integration*), Prishtina, Qendra për të Drejtat e Njeriut të Universitetit të Prishtinës, 2007, p. 23.

<sup>107</sup> See Langford, *The Justiciability*, p.18.

<sup>108</sup> See Article 3.3 of the Constitutional Framework.

<sup>109</sup> See Article 1, paragraph 2 of the Constitution of the Republic of Kosovo.

generations of human rights.<sup>110</sup> However as will be seen below, civil and political rights are predominant in the Constitution. In addition, as it happened with the Constitutional Framework, socio-economic treaties are excluded from it.

The list of human rights instruments that are binding through the Constitution are: Universal Declaration of Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, International Covenant on Civil and Political Rights and its Protocols, Council of Europe Framework Convention for the Protection of National Minorities, Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.<sup>111</sup> Furthermore it is stated that these documents are directly applicable in the Republic of Kosovo and, in the case of conflict, they have priority over legal provisions and other acts of public institutions of Kosovo.<sup>112</sup>

If in UNMIK regulations, including the Constitutional Framework, human rights were regulated in relation to the applicability of the international standards of human rights through the application of the international documents, in the Constitution, apart from listing many of the most important international human rights documents as binding for Kosovo's legal order, the whole range of human rights are regulated in about 31 articles of the Constitution. Therefore one can call it *a constitutional catalogue of human rights in Kosovo*. The human rights that are protected by the Constitution are human dignity, equality before the law, right to life, right to personal integrity, prohibition of torture, cruel, inhuman or degrading treatment, prohibition of slavery and forced labour, right to liberty and security, rights of the accused, right to fair and impartial trial, right to legal remedies, the principle of legality and proportionality in criminal

---

<sup>110</sup> Ibid, Article 21, para.1

<sup>111</sup> Ibid, Article 22.

<sup>112</sup> Ibid.

cases, right not to be tried twice for the same criminal act, freedom of movement, right to privacy, right to marriage and family, freedom of belief, conscience and religion, religious autonomy, freedom of expression, right of access to public documents, freedom of media, freedom of gathering, freedom of association, freedom of election and participation, protection of property, right to education, freedom of art and science, right to work, rights of children, health and social protection, and responsibility for the environment.<sup>113</sup>

### **3.3.Socio-economic rights in Kosovo and its relationship with the Committee on Economic, Social and Cultural Rights**

It is important to note that even though Kosovo is not member of the UN and therefore unable to accede to the international human rights treaties, there is a communication between Kosovo and the Committee on Economic, Social and Cultural Rights, through UNMIK. Up until now UNMIK have submitted a report in the Committee in 2007 and Kosovo has replied to Committee's remarks and questions in a lengthy report in October 2008. Even though the whole process was developed formally under the UNMIK umbrella, the whole replying 2008 report, drafted by the government of Kosovo refers to itself as Republic of Kosovo and its Constitution as a state constitution. Furthermore on 10 November 2008 in Geneva, the report was presented before the Committee by Habit Hajredini, the director of the Office of Good Governance and Human Rights in the Office of the Prime Minister of Kosovo, despite protests by the delegation of Serbia. Although these procedures are unusual, since they are established for the member states, it is important that a way was found to include Kosovo in this process, which is otherwise an important mechanism in improving human rights in UN Member States.

Despite the immense progress forward made by Kosovo in the field of human rights both in legislation and in practice, delicate problems still surface after a deeper analysis of the Constitution. Some

---

<sup>113</sup> Ibid, Articles 23 to 52.

of the remarks were present also in the Concluding Comments of the Committee made in November 2008.

First, apart from having a great number of instruments directly applicable in our legal order, the main international treaty regarding economic and social rights (ICESCR), one of the three documents making up the *International Bill of Human Rights*, has still been excluded from Kosovo's constitutional and legal order. In addition, even though Kosovo is aspiring to become a member of the CoE (a prospect more likely than that of UN membership), it has nevertheless excluded the ESC as the main regional socio-economic rights treaty. Surprisingly enough these two very important documents have not been included in the Constitution despite opposite hopes at the time of its drafting. The fact that the professional and public opinion were very critical when these documents were not included in the UNMIK Constitutional Framework did not stop the politicians and professionals who were part of the commission that drafted the Constitution to neglect the issue again. According to Professor Zejnuallah Gruda the exclusion of these two very important documents is one of the biggest deficiencies of the Kosovo human rights system.<sup>114</sup> On the other side in its annual reports, the Kosovo's Ombudsperson reports bringing up this issue as one of the biggest deficiencies of Kosovo's constitutional and legal order. In its annual report for 2012 it is stated that some of the basic socio-economic rights, as the right to adequate housing, the right to work and the right to health insurance are not sufficiently covered by the legal framework in Kosovo. Since there are political discussions about the possibility of amending Kosovo's Constitution in order to change the electoral system, the Institution of Ombudsperson has asked from Kosovo's institutions to use this opportunity for inclusion of the ICESCR and ESC in Kosovo's Constitution.<sup>115</sup>

---

<sup>114</sup> Zejnullah Gruda, presentation on the situation on human rights at the International Conference organized in Prishtina on the 60<sup>th</sup> of anniversary of the UDHR, 23 October 2008, Prishtina.

<sup>115</sup> See The Institution of the Ombudsperson of the Republic of Kosovo, *Twelfth Annual Report, 1 January-31 December 2012*, October 2013, Prishtina, p.20. (see report in

It is important to note that on its Concluding Comments on Kosovo in November of 2008 ‘the Committee is concerned that the Covenant has been omitted from lists directly applicable human rights treaties in Chapter 3.1 of the Constitutional Framework for Provisional Self-Government in Kosovo and in article 22 of the “Constitution” adopted by Kosovo Assembly on 9 April 2008,’ and Committee ‘advised the Kosovo authorities to take appropriate measures to ensure that the Covenant is directly applicable’.<sup>116</sup> While this remark was also part of the question submitted by the Committee on the first 2007 Report, it is interesting that the formal position of the Kosovo’s government was that ‘as successor state to the former Yugoslavia, the Republic of Kosovo agrees that ICESCR has been, is and will continue to be directly applicable in the courts of Kosovo’.<sup>117</sup> Also according to the human rights and legal expert Agon Vrenezi the ICESCR is directly applicable in Kosovo as successor state to ex-Yugoslavia, which was party to this Covenant. Furthermore he states that there is no need for Kosovo neither to sign nor to ratify it, but just to follow examples of other states created after the break-up of Yugoslavia. To clarify this issue he recommends that the Institution of the Ombudsperson to ask the Constitutional Court for interpretation whether the ICESCR is directly applicable in Kosovo based on succession of international treaty obligations after the break-up of Yugoslavia.<sup>118</sup> Since Austria will be observed latter on, however it is worth noting here that the Committee in all its concluding observations has demanded from the Austrian state to make ICESCR a constitutional law, and not only an ordinary law applicable in Austria through its accession to the ICESCR.

---

[http://www.ombudspersonkosovo.org/repository/docs/55778\\_Raporti\\_2012\\_510651.pdf](http://www.ombudspersonkosovo.org/repository/docs/55778_Raporti_2012_510651.pdf), last checked on 21 January 2014).

<sup>116</sup> Committee on Economic, Social and Cultural Rights, Concluding Comment: UNMIK, (18.11.2008), E/C.12/UNK/CO/1, paragraph 9, p.2.

<sup>117</sup> See Republic of Kosovo response to the Committee on Economic, Social and Cultural Rights, p.4, October 2008.

<sup>118</sup> Interview with Agon Vrenezi, Human rights and legal expert. Interview was conducted on September of 2014. Interview is in author’s file.

Notwithstanding the official position of the government in their communication with the Committee, different governmental officials and members of the commission that drafted the Constitution give different opinions on this issue. According to Deputy Prime Minister Hajredin Kuçi, who was also the chair of the Constitutional Commission that drafted the Constitution, the only reason for excluding the ICESCR and ESC from the Constitution rested with the financial implications of such an act. He said that had the ICESCR been made part of the Constitution it would have cost too much for the budget of Kosovo to implement. Thus, according to him, this is the burden that the state budget cannot sustain for the moment. In this regard they did not want to include something in the Constitution that could not be respected.<sup>119</sup> The executive director of the Council for the Defence of Freedoms and Human Rights Behxhet Shala, also stated that the socio-economic treaties were left out of the Kosovo Constitution for financial reasons, adding that it was financial implications that were delaying the approval of the health insurance scheme in Kosovo, too.<sup>120</sup>

The aim of this paper is to raise awareness that this is not a valid argument taking into consideration the very idea that socio-economic rights are progressive in their nature when it comes to their implementation. Furthermore ICESCR is very clear in its article 2 when stating that “each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative

---

<sup>119</sup> Cited by Valon Murati, “Kosovo Between International Administration, National Efforts for Statehood and Parallel Structures: Consequences for Human Rights and Democracy”, in Wolfgang Benedek, *Lessons (not) Learned with Regard to Human Rights and Democracy: A Comparison of Bosnia and Herzegovina, Kosovo and Macedonia*, European Academy Press, 2009, p.131. Interview with Hajredin Kuçi was conducted on 4 February 2009 in Pristina.

<sup>120</sup> Interview with Behxhet Shala, Executive Director of the CDFHR. Interview was conducted on 1<sup>st</sup> September 2014 in Prishtina. Interview is in authors files.

measures”<sup>121</sup>. Furthermore even though ESC itself does not specifically allow for the rights to be achieved progressively, it allows a lot of room for states to select which rights they will opt to implement immediately.

Secondly, even though Kosovo’s Constitution has a catalogue of rights, only few are of typical socio-economic nature as the right to education, the right to work and health and social protection. There is also a *responsibility for the environment*, a right that can be considered as a third generation right. Most of the other rights mentioned above are either pure civil and political rights, or mixed rights in their nature (protection of property or the rights of child). This is also an indication that when it comes to listing the rights in the Constitution, socio-economic rights are lagging behind civil and political rights.

The importance of direct communication with international mechanisms in the field of human rights can be seen also in the case of Kosovo. Even though Kosovo is not part of UN, its communication with Committee, particularly comments submitted by the Committee played an important role in order to take socio-economic rights much more seriously by the Kosovo government. Furthermore it reflects how important this communication is in progressive realization of the socio-economic rights. There have been many issues that have been addressed in the meantime by Kosovo’s institutions. The Committee expressed concern with different aspects of the realization of the socio-economic rights. It stated that the lack of implementation of the Anti-Discrimination Law, the Law on Gender Equality, and the lack of the law on the rights of persons with disabilities in Kosovo, the lack of law on strikes and trade union organizations is a source of serious concern for the Committee. Also a number of remarks were directed toward Kosovo in regard to the position of the Roma, Ashakali and Egyptian communities, particularly in regard to child registration, education, employment, etc.<sup>122</sup> Many of these issues have either already been addressed by Kosovo’s institutions or they are in the

---

<sup>121</sup> See article 2, para.1 of the ICESCR.

<sup>122</sup> See CESCR, Comments: UNMIK, paragraphs 12, 13, 14, 15, 16 20, pp.3-5.

process of addressing them. Three laws, dealing with anti-discrimination, gender equality and Ombudsperson are in the process of revision. The result of these changes will be that the Institution of Ombudsperson will have much more executive powers in implementing anti-discrimination provisions of our laws.<sup>123</sup> Also, since 2008 a number of laws have been introduced that were in one or another way in the list of demands by the Committee. Therefore one can say that some of the basic socio-economic rights are protected through specific laws like Law on Labour (from 2010), Law for Organizing Trade Unions in Kosovo (2011), Law on Strikes (2010), Law on Vocational Ability, Rehabilitation and Employment of People with Disabilities (2008), Law on Social Assistance Scheme (2003 and amended on 2011), Law on Social and Family Services (2005 and amended on 2012), Law for Blind Persons (2011), Law on Material Support for Families of Children with Permanent Disability (2008)<sup>124</sup>, etc. It is in the process of drafting is the law for paraplegics and tetraplegics, but also the law on health insurance that will also address other concerns of the Committee.

Also in regard to the improvement of the socio-economic and civil and political rights of the RAE Community, in December of 2008 the Kosovo government, adopted the Strategy for the Integration of the Roma, Ashkali and Egyptian Communities 2009-2015, which gives due importance to the realization of their socio-economic rights.<sup>125</sup> As part of objectives drawn from this strategy, 17 municipalities have declared April 2014 as ‘the month for free registration’ of the RAE communities and organized a public campaign for sensitizing the relevant communities and the public

---

<sup>123</sup> Interview with Habit Hajredini, director of the Office of Good Governance and Human Rights in the Office of Prime Minister of Kosovo. Interview was conducted on 3 September 2014 in Prishtina. Interview is in author’s file.

<sup>124</sup> All these laws may be found in <http://www.kuvendikosoves.org/?cid=2,122> (last time checked on 21 of January 2014). Also there is Law on Disability Pensions, which is of 2003 and is still an UNMIK Regulation.

<sup>125</sup> See Strategy for the Integration of Roma, Ashkali and Egyptian Communities in the Republic of Kosovo, December 2008, pp.15-44, in [http://www.kryeministriks.net/zck/repository/docs/Strategy\\_for\\_the\\_Integration\\_of\\_Roma,\\_Ashkali\\_and\\_Egyptian\\_communities\\_2009-2015.pdf](http://www.kryeministriks.net/zck/repository/docs/Strategy_for_the_Integration_of_Roma,_Ashkali_and_Egyptian_communities_2009-2015.pdf) (last checked in September 2014).

opinion. As a result, just during one month of Spring alone 228 persons were registered. Apart from the campaign, registration for these communities has been made free, based on the administrative order issued by the Ministry of Interior Affairs.<sup>126</sup> Also as a result of positive discrimination policies in employing persons from RAE communities, Kosovo Police has carried out measures to facilitate procedures for recruitment of the members of this community.<sup>127</sup>

### **3.4. Other problems: lack of access for Kosovo's citizens to international human rights mechanisms**

One of the most serious problems facing Kosovo is its absence from the major international and regional organizations such as UN and CoE. This absence is due to the fact that the independence of Kosovo is not recognized by Serbia and by dozens of other states. Consequently the accession to different human rights treaties is legally and politically impossible. Even though since the end of war, paradoxically the ECHR is part of our legal system, our citizens are deprived of using its implementing mechanism ECtHR. Undoubtedly and unfortunately this absurd situation which has left Kosovo as a black hole in Europe for about 14 years, despite the strong EU presence in Kosovo (through its mission EULEX, and before through UNMIK), is connected with the disagreement over the political status of Kosovo by many states, but most notably by Serbia and Russia.<sup>128</sup> This situation is affecting the whole range of human rights, including the socio-economic rights, since Kosovo cannot be part of socio-economic treaties, despite the semi-official communication with the Committee on Economic, Social and Cultural Rights.

It is worth noting that UNMIK bears its share of responsibility on this issue. Since 2005 the CoE through its Resolution 1417 required from UNMIK to establish a Human Rights Court in Kosovo,

---

<sup>126</sup> Interview with Habit Hajredini.

<sup>127</sup> Ibid.

<sup>128</sup> See for this issue more in Bernhard Knoll, “*The Shell Game: The European Court’s Failure to Close the Human Rights Gap in Kosovo*”, University of Prishtina Journal of Human Rights and Policy, Vol. 1, January 2008, at 65-81.

composed of 5 international and 4 national judges (all of them appointed by the president of the ECtHR) that would be a final authority in Kosovo in regard to human rights violations. This would be a place for citizens of Kosovo to lodge complaints against Kosovo's institutions and, even more importantly, against internationals (otherwise immune from prosecution and proceedings in regular Kosovo courts) and international institutions like UNMIK, KFOR, and KFOR national contingents. This court should have functioned based on the procedures and case law of the ECtHR, and would have been kind of an ECtHR branch having a direct link with Strasbourg.<sup>129</sup> The chamber for Human Rights in Bosnia and Herzegovina that was established based on Dayton Accords in the first years after the war, should have served as a model, even though this chamber was only competent to review the acts of local or state organs, not those of international institutions. Unfortunately this proposal was declined by UNMIK. Even today we are continuing to have this strange situation, when our citizens are deprived of applying in Strasbourg for cases when they deem their basic human rights were violated either by Kosovo's institutions or by internationals. Thus they are deprived from the remedy that for the moment is the most efficient mechanism at the regional level and international level. In this resolution it is stated very clearly that "Kosovo is a part of Europe, and the fact that it is currently under interim administration should not deprive its inhabitants of the effective protection of European human rights standards".<sup>130</sup>

This situation is continuing even after Kosovo declared its independence in 2008 and is now recognized by more than 105 states and despite the fact that there is an agreement from 2013 between

---

<sup>129</sup> See Resolution 1417 (2005), Protection of Human Rights in Kosovo, Assembly debate on 25 January (3<sup>rd</sup> sitting) Doc. 10393, Report of the Committee on Legal Affairs and Human Rights, Rapporteur: Mr. Lloyd. See for this issue also Georg Nolte, "Human Rights Protection against International Institutions in Kosovo: The Proposals of the Venice Commission of the Council of Europe and their Implementation", in: Dupuy et al (eds.), *Common Values in International Law*, Festchrift fur Christian Tomuschat, Kehl: Engel, 2006 at 245-258.

<sup>130</sup> Ibid, Article 2.

Kosovo and Serbia facilitated by EU, for Kosovo to be able to have access to regional and international meetings and to become part of some of international and regional organizations through using a footnote \*<sup>131</sup>. However this does not extend to such political organizations such as CoE and UN. As a result, human rights, democracy and the rule of law have been affected negatively, as well. Deprivation of Kosovo's citizens to use international mechanisms will further promote impunity and unaccountability of the courts and other national institutions and also of the international institutions and organizations placed in Kosovo. Furthermore the situation is really awkward taking into consideration that Kosovo voluntarily has accepted to implement some of the key international instruments, notably ICCPR and ECHR, but on the other side its citizens and society as whole cannot benefit from what is the main success of these instruments, particularly ECHR, to submit complaints in front of ECtHR and to the HRC. Also as was seen above, Kosovo has maintained a kind of communication with the Committee on Economic, Social and Cultural Rights through UNMIK. What is for sure, Kosovo's citizen will not be able to file complains to this Committee for violation of socio-economic rights. Even if it is considered that Kosovo succeeded ex-Yugoslavia in applying ICESCR, by not being a member of the UN, Kosovo cannot sign and ratify the Optional Protocol, which established the mechanism of individual and collective complaint to the Committee. This situation resulted from the fact that this Convention is not part of the Constitution as the other one is. The effect of this situation is not conducive for the quality of the socio-economic rights in Kosovo. As was seen from above elaborations, the growing case law of ECtHR has found way to protect also the socio-economic rights. In this regard the lack of possibility to access not only ECSR but also ECtHR directly affects the socio-economic rights of Kosovo's citizens. Both these situations are one more argument that socio-economic treaties

---

<sup>131</sup> \*Means 'This label [i.e. "Kosovo"] does not prejudge the status of Kosovo and is in accordance with Resolution 1244 and the opinion of the ICJ on Kosovo's declaration of independence.'

should have been at least part of the Kosovo's Constitution, not only as necessity and as global trend, but also based on very awkward situation when it comes to the accession to this treaty by Kosovo.

Most likely Kosovo's membership to the UN looks to be a long way forward, with slightly better odds for Kosovo to become a member of the CoE in the near future. In this regard there is a preparation of Kosovo's government to apply for membership at the end of 2014, with Kosovo's civil society playing an important role in this regard.<sup>132</sup> As part of this project Kosovo have become a full member of the Venice Commission in June 2014. It is relevant to analyze the relationships the Kosovo state will establish relative to ESC and ESCR. Until then one can only criticize Kosovo for not incorporating these documents along with civil and political aspects in its Constitution.

An immense role in the application of the human rights standard described in the constitution rests with different national institutions. The most important ones are the Institution of Ombudsperson and the Constitutional Court. While being very important in raising issues, examining individual cases and giving recommendations to the public institutions, and doing public pressure to the governmental and judicial institutions, the Ombudsperson institution is however not judicial in its nature;<sup>133</sup> the Constitutional Court is the remedy of last resort for allegations of human rights violations by Kosovo's institutions.<sup>134</sup> Since Kosovo's citizens can not apply to ECtHR, the Constitutional Court is obliged to take into consideration case law of ECtHR in its decisions. Therefore this court is one of the main safeguards of human rights and fundamental freedoms, as well as democratic principles of the new state. The case-

---

<sup>132</sup> See the Letter of 41 Kosovo's NGO's directed to Mr. Thorbjørn Jagland, Secretary General of the Council of Europe, on 29 April 2014. The letter on behalf of these organizations have been written by Leonora Kryeziu, Executive Director of Prishtina Institute for Political Studies in [http://www.cpc-ks.org/repository/docs/Letter\\_of\\_Kosovar\\_Civil\\_Society\\_to\\_the\\_Secretary\\_General\\_of\\_the\\_Council\\_of\\_Europe.pdf](http://www.cpc-ks.org/repository/docs/Letter_of_Kosovar_Civil_Society_to_the_Secretary_General_of_the_Council_of_Europe.pdf) (last checked on September 2014)

<sup>133</sup> See articles 132-135 of the Constitution of the Republic of Kosovo.

<sup>134</sup> Ibid, article 113.

law of this court should be observed in the future also in regard to socio-economic rights.

## **4. Socio-economic rights international treaties implementation in Austria**

### **4.1. Austrian constitutional and legal framework regarding human rights**

The history of Austrian state is a complex one also for its rich past heritage as one of the oldest and strongest empires in the European soil, its short but very difficult life of the pre-war republic, its inclusion in the Third Reich and finally the stabilization of the post-war republic.<sup>135</sup> This complexity also played a role in the definition of constitutional and legal framework of the Austrian state and its relationship towards human rights.

First laws dealing with human rights date back to the time of establishment of the constitutional monarchy in 1860s.<sup>136</sup> These include the Law of 27 October 1862 on Protection of Personal Liberty, Law of 27 October 1862 on Protection of the Rights of the Home and the most important Basic Law of 21 December 1867 on the General Rights of Nationals. The last two laws are still part of the Austrian Constitution.<sup>137</sup> Provisions related to the protection of fundamental freedoms have been under influence of the *age of enlightenment* and also by the 18<sup>th</sup> century French and American Revolutions and their respective human rights documents.

Basic Law on the General Rights of Nationals is a charter of fundamental freedom rights including freedom of assembly, of association, of speech, of religion, of employment, equality before the

---

<sup>135</sup> See Manfred Stelzer, *The Constitution of the Republic of Austria: A Contextual Analysis*. Hart Publishing, 2011, pp. 1-37.

<sup>136</sup> Ibid, p. 5.

<sup>137</sup> See Article 149 of the Federal Constitution Law of Austria, in <http://www.vfgh.gv.at/cms/vfgh-site/english/downloads/englishverfassung.pdf>.

law, equality of all nationals to access public institutions, etc.<sup>138</sup> As Stelzer rightly pointed out ‘the main point of this charter was to limit the power of the executive branch of the (monarchical) government.<sup>139</sup> It is very interesting to observe that from the perspective of constitution and the treating and protection of human rights therein Austria did not move too far from that time. This is true due to the history of the country, the way the political confrontation between Social Democrats and Conservatives was shaped and of course due to the legacy of the Second World War.

There have been serious discussions in 1920 when the Federal Constitution was drafted to establish a new charter of fundamental rights. Political parties failed to agree on the inclusion of the socio-economic rights within this charter. Consequently, the Basic Law on the General Rights of Nationals remained in force. Furthermore this law is still in force because all attempts to seriously establish new human rights charter have constantly failed. In 2003 the Constitutional Convention was established to propose changes to the Federal Constitution, and they recommended a new charter which would comprise also socio-economic rights. Even though it seemed that both parties (Social Democrats and Conservatives) agreed to this new charter there is still no development in this direction.<sup>140</sup>

On the other hand one can discern gradual minor developments in the field. In 1988 the right to personal liberty was redrafted.<sup>141</sup> It is worth noting that in its Article 7 Austrian Constitution guarantees that ‘all Federal nationals are equal before the law. Privileges based upon birth, sex, estate, class or religion is excluded. No one shall be discriminated against because of his disability... Measures to promote factual equality of women and men,

---

<sup>138</sup> See Basic Law of 21 December 1867 on the General Rights of Nationals in the Kingdoms and Länder represented in the Council of the Realm,  
<http://www.vfgh.gv.at/cms/vfgh-site/english/downloads/englishverfassung.pdf>,  
pp.172-175.

<sup>139</sup> Stelzer, p.209.

<sup>140</sup> Ibid, p.210. Also about the foundation and work of the Austrian Convention see in [http://www.konvent.gv.at/K/EN>Welcome\\_Portal.shtml](http://www.konvent.gv.at/K/EN>Welcome_Portal.shtml).

<sup>141</sup> Ibid.

particularly by eliminating actually existing inequalities, are admissible... Public employees, including members of the Federal Army, are guaranteed the unrestricted exercise of their political rights.<sup>142</sup> Furthermore in 1973 a constitutional law was passed to establish the International Convention on the Elimination of All Forms of Racial Discrimination as part of the Austrian legal system.<sup>143</sup>

In the absence of the political compromise for the new human rights charter the most important step that affected human rights legislative and constitutional environment in Austria was the accession of Austria to the European Convention on Human Rights in 1958. In 1964 Austria adopted ECHR in the form of constitutional law and made it directly applicable to the legal system of the country. This also led to another important progress: the Austrian Constitutional Court, reluctantly in the beginning, over time started to apply the jurisprudence of the European Court on Human Rights in its development of human rights doctrine. Therefore any Austrian citizen can file complaints in the Constitutional Court invoking the rights guaranteed by ECHR. Consequently Constitutional Court has enforced some important changes in the fields of law as the system of administrative review, criminal law proceedings and parental custody.<sup>144</sup>

## 4.2. Socio-economic rights in Austria

The Austrian Constitution covers only civil and political rights, as well as minority rights, but there is no reference to the socio-economic rights with reference to the social welfare state as is the case with the German Constitution (German constitutional doctrine has had

---

<sup>142</sup> See Article 7, of the Federal Constitutional Law of Austria.

<sup>143</sup> Stelzer, p.212.

<sup>144</sup>Ibid, pp. 16, 210. See also Gabriele Kucsko-Stadlmayer, *Constitutional Review in Austria: Traditions and New Developments*, discussion held at the International Conference dedicated to the 20<sup>th</sup> anniversary of the Constitutional Court of Rumania, 2012, p.3 (see in <http://www.ccr.ro/ccrold/relations/LUCRARI/Prof.%20Gabriele%20Kucsko-Stadlmayer.pdf>).

a huge influence also in Austrian constitutional doctrine). The German Constitution, in its Article 20, stipulates that ‘Germany is a democratic and social state’.<sup>145</sup> The European Social Charter, which has been ratified by Austria, has only the status of a simple law, while International Covenant on Economic and Social Rights has only the status of a law and does not directly apply to the legal system of Austria.<sup>146</sup>

All these facts as observed by Stelzer create an impression that Austria is one of the most liberal market-oriented societies. However the Austrian legal system ‘follows the idea of a social welfare state rather than a liberal market-oriented society’. Therefore one can argue that Austria is one of the most elaborate social welfare systems.<sup>147</sup> Thus more than 98% of people working and living in Austria are part of the mandatory social insurance scheme that covers the risk of poor health and provide for insurance against certain accidents, unemployment and old age. Also there are different social welfare institutions and employees and employers share equally into the employee’s contributions.<sup>148</sup> It is important to note that the unemployment rate is the lowest in the EU-27, with 4.4% in 2010 against 9.7% in the EU-27 average.<sup>149</sup>

Since there are different levels of wages and salaries, peoples are entitled to various transfers. Professor Manfred Stelzer mentions a study that has revealed that this system manages effectively a redistribution of economic wealth. So, the study compares the economic situation of three families consisting of two adults and two children which have different monthly incomes of €950, €1,900 and €3,800 respectively. The lowest earning family is entitled to a transfer that will increase their incomes up to €2,187. The family receiving €1,900 may receive transfer that will increase their incomes up to €3,217,

---

<sup>145</sup> See Article 20 of the Basic Law for the Federal Republic of Germany, in <https://www.btg-bestellservice.de/pdf/80201000.pdf>.

<sup>146</sup> See Stelzer, p. 215.

<sup>147</sup> Ibid.

<sup>148</sup> Ibid, pp.215-216.

<sup>149</sup> See, European Committee of Social Rights, Conclusions XX-1 (2012), (Austria), (for the period 2007-2010), p. 5.

while the highest earning family will fall back to a mere €3,250. Therefore even though monthly earnings of the poorest and the richest family differed by 300% prior to the transfers, their monthly net income however is almost equal.<sup>150</sup> Even though this system has been criticized (particularly by Conservatives) because it may influence people not to work harder and to get educated, this system is still in place and is part of the Austrian social-welfare system.<sup>151</sup>

It is important to note that since 2009 when EU Fundamental Rights Charter entered into force (as part of the Lisbon Treaty), the rights stipulated in the Charter are considered as ‘constitutionally guaranteed rights’ that can be directly applied by the Court. Furthermore rights guaranteed in the Charter go beyond those of ECHR, since it also contains socio-economic rights. As Gabriele Kucska-Stadlmayer from the Austrian Constitutional Court stated ‘as to social rights of the Charter it is unclear how and in which extent they will be made justiciable before the Constitutional Court’.<sup>152</sup>

#### **4.3. Austria and International Covenant on Economic, Social and Cultural Rights**

Austria has ratified ICESCR on 10 September 1978. Up until now it has only signed, but has not ratified the Optional Protocol to ICESCR which entered in force in 2013. Austria has so far submitted four periodic reports.

As can be seen from the 2013 Concluding Observations of the UN Committee on Economic, Social and Cultural Rights (the Committee), but also from the Austrian fourth periodic report, there are areas where some of the treaty obligations and other objections drawn from concluding observations have been met in the meantime.

In its last Concluding Observations the Committee points out many positive aspects which have been undertaken by Austrian state after their previous remarks. One of positive aspects was that in 2006

---

<sup>150</sup> Stelzer, p. 216.

<sup>151</sup> Ibid, 216-217.

<sup>152</sup> See Kucska-Stadlmayer, p.4.

the law was amended to extend the eligibility to run in work council elections to all employees irrespective of their nationality.<sup>153</sup> As it is observed below the same was demanded also by different ECSR Conclusions as well as 2006 Committees Concluding Observations.<sup>154</sup> Other positive aspects that have been achieved according to the Committee were also the adoption of the National Nutrition Action Plan in 2010 and the establishment of the National Nutrition Commission to promote proper nutrition and to counter obesity, the amendment of the Equal Treatment Act of 2011, which introduces an obligation for all employers to indicate the minimum wage in job advertisements, the adoption of the Act Combating Wage and Social Dumping in 2011 to ensure that foreign and domestic employers comply with wage regulations and the establishment of the first emergency accommodation for women and girls at risk.<sup>155</sup>

Also some of the international treaties with influence in realization of the social, economic and cultural rights, which the Committee have demanded to be ratified by Austria in previous concluding observations they have ratified in meantime. These instruments include the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto in 2008, the 1954 Convention relating to the Status of Stateless Persons in 2008, and the International Convention for the Protection of All Persons from Enforced Disappearance in 2012.<sup>156</sup>

One of the constant and most significant remarks that the Committee has in all its concluding observations is that ‘progress has not been made to systematically incorporate the provisions of ICESCR into the State party’s domestic legislation’ as well as ‘the

---

<sup>153</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations: Austria, paragraph 4(a), E/C.12/AUT/CO/4, (13 December 2013), p.1-2.

<sup>154</sup> CESCR, Concluding Observations: Austria, paragraph 12, E/C.12/AUT/CO/3, (25 January 2006), p.2.

<sup>155</sup> CESCR, Concluding Observations: Austria, 2013, paragraph 4 (b), (c), (d) and (e), p.1-2.

<sup>156</sup> Ibid, paragraph 3, p.1.

lack of court decisions invoking the provisions of the Covenant,<sup>157</sup>. Austrian reply on this issue is more or less quite schematic saying the ‘ICESCR itself is not directly applicable in Austria, but it can be assumed that the rights granted in this document have to a large extent been put into legislation in Austria. Therefore, courts and administrative authorities are obliged to ensure, in their jurisdictions, the implementation of the rights established in ICESCR’.<sup>158</sup>

This situation resembles with that of Kosovo which, as already stated have not incorporated ICESCR in its constitution, even though covering some of the basic rights through its legislation. On the other side the elaborated welfare state in Austria cannot be found yet in Kosovo, since it is making initial steps to consolidate its statehood. This Austrian welfare state also affects every day application of the socio-economic rights, while Kosovo is suffering in establishing values that are compatible with a Western type welfare state. The situation in Kosovo affected by liberal market transition is in sharp contradiction to the still prevailing mentality of the population affected by socialist past that socio-economic rights are primary rights of population.

There are also issues which after remarks and recommendations have been introduced but not in a satisfactory manner according to the Committee. Therefore the issue of paternal leave was treated in the third Concluding Observations connected to the facilitation of the re-entry of women into the labor market.<sup>159</sup> In its fourth periodic report Austria has indicated that it introduced the parental leave in the public sector.<sup>160</sup> This fact has been acknowledged and welcomed by the Committee in its consequent concluding observations where it noted that the ‘Committee is concerned that

---

<sup>157</sup> Ibid, paragraph 5 and 6, p.2. More or less the same position CESCR has in its Concluding Observations: Austria 2006, paragraph 8, p.2 and CESCR, Concluding Observations: Austria, paragraph 10, (14 December 1994), E/C.12/1994/16, p.2.

<sup>158</sup> CESCR, Implementation of the International Covenant on Economic, Social and Cultural Rights: Fourth periodic reports submitted by state parties under article 16 and 17 of the Covenant – Austria, paragraphs 2-3, (28 July 2010), E/C.12/AUT/4, p.2.

<sup>159</sup> CESCR, Concluding Observations: Austria, 2006, paragraph 13, p.2.

<sup>160</sup> CESCR, Fourth periodic report: Austria, 2010, paragraph 85, pp.14-15.

paternity leave is currently limited to civil servants'.<sup>161</sup> More or less the same attitude has been held by the Committee for the issue of the childcare facilities under the age of 3 years. Even though it has been admitted that there have been improvements in increasing the number of childcare facilities, 'the Committee is concerned that such facilities remain insufficient and with inadequate opening hours to enable parents, in particular women, to fully exercise the right to work'.<sup>162</sup>

The main vulnerable groups that can be identified in the fourth concluding observations of the Committee and need improvement in relation to different socio-economic rights are asylum seekers (inadequate social benefits, poor housing conditions etc), women (disproportionately represented in poorly paid part-time jobs, often receive lower remuneration than man for work of equal value), youth (unemployment remains 60% higher than the unemployment rate of adults), migrants (high dropout of their children) etc.<sup>163</sup>

In its two last Concluding Observations the Committee considers that the lack of progress in adopting a comprehensive human rights action plan is seriously harming the development of the specific policies and action plans. Also the Committee recommends to Austria to harmonize its anti-discrimination legislation, since 'the lack of coherent and consistent non-discrimination legislation throughout the State party and the high number of institutions involved in the implementation of anti-discrimination and equality legislation... leads to confusion, legal uncertainty and potential injustice for individual seeking an effective remedy'.<sup>164</sup>

The influence of the Committee's concluding observations and its recommendations can be seen in the periodic reports of Austria and its efforts to realize some of the recommendations issued by the Committee. This can be seen also as one of the results of these reporting procedures and as a very important step in empowering not only socio-economic rights to the state parties but also of the

---

<sup>161</sup> CESCR, Concluding Observations: Austria, 2013, paragraph 15, p.5.

<sup>162</sup> Ibid.

<sup>163</sup> Ibid, paragraphs 13, 14, 16 and 22, pp.4, 5, 7.

<sup>164</sup> Ibid, paragraph 8 and 9, p.3.

Committee as a mechanism which oversees the implementation of the ICESCR. As it was already said its role is getting stronger with the establishment of the individual and collective complaint under the ICESCR.

#### **4.4. Austria and the European Social Charter**

Austria has ratified the European Social Charter in 1969 and the Revised European Social Charter in 2011, and has accepted 76 out of 98 paragraphs of Revised Charter. Even though it has signed it did not yet ratify the Additional Protocol of the ESC that provides for the possibility of collective complaints. Between 1972 and 2013, Austria submitted 29 reports on the application of the ESC and two reports on the application of the Revised ESC. These reports have been submitted to the European Committee on Social Rights, which, after thorough deliberations, publishes conclusions on conformity or non-conformity of Austria with application of certain rights of the ESC.

It is worth noting that this process of reporting to the ECSR and its conclusions has played an important role in improving certain aspects of socio-economic rights environment in Austria.

While in its Conclusions XVIII-2 of 2007 (that covered the period from 2001-2004) analyzing the application of the Article 4.1 of the ESC which guarantees the right to a fair remuneration respectively the adequate remuneration, ECSR stressed that the minimum wage of €683 provided to a skiing instructor fall below 60% of the net national average income of €1,465. In this case ECSR concludes that the situation in Austria is not in conformity with Article 4.1 ‘as it has not been established that a decent standard of living is guaranteed for a single worker earning minimum wage.<sup>165</sup> In the Conclusions XIX-3 of 2010 (that covered the period from 2005-2008) that observed again

---

<sup>165</sup> See European Committee of Social Rights, Conclusions XVIII-2 (2007), (Austria), (for period 2001-2004), p.7. About all ECSR Conclusions see in [http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsIndex\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsIndex_en.asp)

article 4 the improvements in this regard are obvious as a result of the framework agreement between social partners to implement a minimum wage of €1,000 for workers in all sectors of the economy, which is more than 60% of both national average (in 2007 it was €1,320) and national median wages (in 2007 it was €1,241).<sup>166</sup>

Or let us take Article 5, the right to organize. ECSR concluded in its Conclusions XVIII-1 of 2006 (covering the period from 2003 to 2004) that Austria is not in conformity with this article because ‘foreigners could not stand during the reference period for election to workers councils unless they had the nationality of a member state of the EU or a state party to the European Economic Area Agreement’.<sup>167</sup> This situation substantially changed in 2006 since through legislation this situation was remedied and all migrants can now compete for being elected to the work councils, irrespective of their citizenship.<sup>168</sup>

It is important also to note that Section 8.2 of the Aliens Employment Act has been repealed, which required employers who reduce manpower to make foreign workers who had entered the labor market for the first time redundant first.<sup>169</sup> Because of this situation, ECSR in its conclusions constantly found that Austria is not in conformity with Article 1.2, right to work, respectively freely undertaken work (non-discrimination, prohibition of forced labor, other aspects).<sup>170</sup> So changes that happened in this regard are an important step in application of Article 1.2 of the ESC.

Also there has been progress in the prohibition of discrimination on the ground of disability in a day to day context. While in previous conclusions it was stated that Austria is not in conformity with Article 15 which stipulates the right of physically or mentally disabled persons to vocational trainings.<sup>171</sup> Since 2006

---

<sup>166</sup> See Ibid, Conclusions XIX-3 (2010), (Austria), (for period 2005-2008), p.6.

<sup>167</sup> See Ibid, Conclusions XVIII-1 (2006), (Austria), (for period 2003-2004), p.7.

<sup>168</sup> See, Ibid, Conclusions XIX-3, p.8.

<sup>169</sup> See Austria and the European Social Charter, in [http://www.coe.int/t/dghl/monitoring/socialcharter/countryfactsheets/Austria\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/countryfactsheets/Austria_en.pdf)

<sup>170</sup> See ECSR, Conclusions XX-1, p.10, Conclusions XIX-1, (2008), (Austria), (for the period 2003-2006), p.5, Conclusions XVIII-1, p.8, Conclusions XVII-1, (2003), (Austria), (for the period 2001-2002), p.8.

<sup>171</sup> Ibid, Conclusions XVIII-2, pp.18-20.

various laws have been enacted that prohibit discrimination of disabled people. While ECSR on its last Conclusions have deferred its conclusions of conformity with this article, in order to see the real impact of these laws, it has been stated that significant steps have been done in this direction.<sup>172</sup>

Also there has been a positive change when it comes to the application of Article 12.1, the right to social security, respectively the existence of a social security system. In its Conclusions XIX-2 of 2009 (that covered the period from 2003 to 2007) the ESCC concluded that ‘the situation in Austria is not in conformity with Article 12.1 of the Charter on the ground that the level of the unemployment benefit for a single person is manifestly inadequate’.<sup>173</sup> In its last Conclusions of 2013, ECSR while noting that there have been positive changes on the unemployment benefit for a single person, it concludes that Austria is in conformity with the Article 12.<sup>174</sup>

Also there are other cases of non-conformity with the provisions of the ESC, which have been noted after examining the Austrian reports by the ECSR. Even though conclusions of the ECSR do not have the force of the case-law of the ECtHR, still they are proving as good pressure mechanism which makes state parties change their legislation or administrative practices when it comes to the implementation of the Charter’s provisions. In this regards, even though the nature of these rights is not progressive as those stipulated in ICESCR, since they do not have the same legal force as Strasbourg case-law, it still provides states with enough timing to improve the socio-economic rights environment in a progressive manner. Further step in implementing rights guaranteed by this Charter from Austria will be made after it ratifies the Additional Protocol that provides for a system of collective complaints.

---

<sup>172</sup> Ibid, Conclusions XIX-1, pp.12-14, Conclusions XX-1, 27-30.

<sup>173</sup> Ibid, Conclusions XIX-2, (2009), (Austria), (it covers the period 2003-2007), p.18. See also Conclusions XVIII-1, p12.

<sup>174</sup> Ibid, Conclusions 2013, Austria, 2014, pp.20-22.

Comparing the Kosovo situation with the one in Austria we can rightly conclude that the lack of a relation between Kosovo and ECSR, affects directly the implementation of socio-economic rights in Kosovo guaranteed by legislation and the constitution. While this relationship has worked to improve socio-economic rights in Austria, Kosovo is continuing to suffer in all fields of human rights due to its absence in international and regional organizations. As was the case with ICESCR, the inclusion of ECS in Kosovo's constitution would have been an important step to change the uncomfortable situation Kosovo finds itself in, and which affects socio-economic and other human rights of Kosovo's citizens

## Conclusion

After a long period of being disputed the socio-economic rights are finding their proper place in the world of human rights. Even though they are considered as 'positive' rights which imply the involvement of public authorities for their realization, they are a matter of policies and are hardly justiciable. On the other side civil and political rights have for a long time been considered as 'negative rights', implying that they are realized with non-interference of state in realization of liberties and rights of citizens and that they are justiciable. However the growing trend is that they should stay on equal footing with civil and political rights. In particular after 1990 and the decline of ideological battle between socialism and capitalism at the state level, both sets of rights are considered as universal, interdependent and indivisible. An issue whether socio-economic rights are justiciable, is also nearing the end. The case law of individual states, jurisprudence of ECtHR, ACtHR and ECSR is a clear indication that socio-economic rights are more and more brought in front of the courts of law to be enforced. In addition, the adoption in 2013 of the Optional Protocol to the ICESCR which established the mechanism of individual and collective complaint is a major breakthrough in empowering socio-economic rights in domestic and international legal systems and in ending the debate about the

justiciability of the socio-economic rights. This new development will have long-lasting influence also in setting up of new mechanisms and institutions and also of new approaches to the actual human rights instruments in the regional level too.

For realization of socio-economic rights it is very important for states to become parties to the main international and regional socio-economic treaties. It is of particular interest for states, and consequently for their citizens, to become part of the ICESCR as an international treaty and of ESC as a regional treaty. By acceding to these treaties states undertake obligations to report to the respective mechanisms (CESCR and ECSR) and to treat seriously and accept their recommendations i.e., changing legislation, administrative practices etc. Above all, conditions have been created for citizens, trade unions, NGOs etc. coming from state parties to file complaints to the CESCR and ECSR. These communications have helped the constant improvement of socio-economic rights, as was case with Austria that was discussed in this paper. The very concept that socio-economic rights can be achieved progressively is best realized through the relationships established by the socio-economic treaty mechanisms and party states.

Kosovo has made important steps in establishing a modern and functional human rights legal framework. Also the situation on the ground has improved recently, particularly when it comes to the realization of civil and political rights and minority rights. Introducing some of the major human rights instruments as part of the Constitution, which are directly applicable in Kosovo and a whole human rights catalogue has been a serious move in establishing Kosovo as a state that respects basic human rights and functions according to principles of the rule of law. However one important setback in this development is exclusion of the socio-economic treaties, i.e. ICESCR and ESC among the international instruments that are directly applicable in Kosovo, and also having very few socio-economic rights within the *human rights catalogue* in the Constitution. This state of affairs has been aggravated by an already

deteriorated political and legal situation which has so far hindered Kosovo to become part of the international organizations, and consequently made impossible for Kosovo and for its citizens to establish legal relationships with socio-economic treaties' mechanisms. In this context, even though we are entering the era of justiciability of socio-economic rights, one need to bear in mind that their nature is progressive, and states have room to maneuver to achieve them progressively to the 'maximum of its available resources', 'by all appropriate means, including particularly the adoption of legislative measures'. In this regard, the best option, particularly knowing that Kosovo will have long way to become part of UN (while there are chances that in next 2-3 years to become part of CoE), is to include ICESCR and ESC as part of the Kosovo's Constitution. In doing so Kosovo's institutions will accomplish their own constitutional concept that all human rights are equal, universal, interdependent and indivisible. Otherwise, Kosovo's citizens will continue to suffer not only from the fact that they cannot have access to international and regional human rights mechanisms, but also from the irresponsibility of their own policy makers, which justify this situation with the lack of financial means.

## Literature:

### Books, articles, speeches and presentations

- Akandji-Kombe, Jean François, “The Material Impact of the Jurisprudence of the ESCR”, in Grainne de Burca and Bruno de Witte (eds.), *Social Rights in Europe*. Oxford University Press, 2005.
- Aston, Philip, “Strengths and Weakness of the ESC’s Supervisory System”, in Grainne de Burca and Bruno de Witte (eds.), *Social Rights in Europe*. Oxford University Press, 2005.
- Beetham, David, *Democracy and Human Rights*. Polity Press, 1999.
- Benedek, Wolfgang, *Lessons (not) Learned with Regard to Human Rights and Democracy: A Comparison of Bosnia and Herzegovina, Kosovo and Macedonia*. European Academy Press, 2009.
- Berlin, Isaiah, “Dy konceptime të lirisë (Two Concepts of Liberty),” in Isaiah Berlin, *Idetë filozofike të shekullit XX dhe katër ese për lirinë (Four Essays on Liberty)*, Onufri, 1996 (translated into Albanian by Bashkim Shehu).
- Brillat, Regis, “The Supervisory Machinery of the European Social Charter: Recent Developments and their Impact”, in Grainne de Burca and Bruno de Witte (eds.), *Social Rights in Europe*. Oxford University Press, 2005.
- Clements, Luke and Alan Simmons, “European Court of Human Rights: Sympathetic Unease”, in Malcolm Langford (ed.), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*. Cambridge University Press.
- Craven, Mathew, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development*. Clarendon Press, 1995.
- Craven, Matthew “The UN Committee on Economic, Social and Cultural Rights”, in Asbjørn Eide, Catarina Krause and Allan

Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*. Second Revised Edition, Martinus Nijhoff Publishers, 2001.

- De Burca, Grainne and Bruno de Witte (eds.), *Social Rights in Europe*. Oxford University Press, 2005.
- Donnelly, Jack, “The Relative Universality of Human Rights”, *Human Rights Quarterly*, Vol.29. No.2, 2007.
- Drzewicki, Kreysztof “The Right to Work and Rights in Work”, in Asbjorn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*, Second Revised Edition, Martinus Nijhoff Publishers, 2001.
- Eide, Asbjørn “Economic, Social and Cultural Rights as Human Rights”, in Asbjørn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*. Second Revised Edition, Martinus Nijhoff Publishers, 2001.
- Eide, Asbjørn and Allan Rosas, “Economic, Social and Cultural Rights: A Universal Challenge”, in Asbjørn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*. Second Revised Edition, Martinus Nijhoff Publishers, 2001.
- Eide, Asbjorn, “The Right to an Adequate Standard of Living Including the Right to Food”, in Asbjorn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*, Second Revised Edition, Martinus Nijhoff Publishers, 2001.
- Eide, Asbjørn, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*. Second Revised Edition. Martinus Nijhoff Publishers, 2001.
- Falk, Richard A., *Human Rights in Horizon: The Pursuit of Justice in a Globalizing World*, Routledge, 2000.
- Gruda, Zejnullah, *Mbrotja Ndërkombëtare e të Drejtave të Njeriut (International Protection of Human Rights)*. Universiteti Fama, 2007
- Gruda, Zejnullah, Presentation on the situation on human rights at the International Conference organized in Prishtina on the 60<sup>th</sup> of anniversary of the UDHR, 23 October 2008, Prishtina.

- Hannikainen, Lauri, *Peremptory Norms (Jus Cogens) in International Law: Historical Development, Criteria, Present Status*. Lakimiesliton Kustannus, 1988.
- Hannum, Hurst, “The Status of the Universal Declaration of Human Rights in National and International Law”, 25 *Georgia Journal of International and Comparative Law*, 1995-1996.
- Ishay, Micheline R., *The History of Human Rights: From Ancient Times to the Globalization Era*. University of California Press, 2004.
- Khaliq, Urfan, and Robin Churchill, “The European Committee of Social Rights: Putting Flesh on the Bare Bones of the European Social Charter”, in Malcolm Langford (ed.), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*. Cambridge University Press, 2008.
- King, Jeff, *Judging Social Rights*. Cambridge University Press, 2012.
- Knoll, Bernhard “*The Shell Game: The European Court’s Failure to Close the Human Rights Gap in Kosovo*”, University of Prishtina Journal of Human Rights and Policy, Vol. 1, January 2008
- Krause, Catarina, “The Right to Property”, in Asbjorn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*. Second, Revised Edition, Martinus Nijhoff Publishers, 2001.
- Langford, Malcolm, “The Justiciability of Social Rights: From Practice to Theory”, in Malcolm Langford (ed.), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*. Cambridge University Press, 2008.
- Langford, Malcolm and Jeff A. King, “Committee on Economic, Social and Cultural Rights: Past, Present and Future”, in Malcolm Langford (ed.), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*. Cambridge University Press, 2008.

- Langford, Malcolm, (ed.), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*. Cambridge University Press, 2008.
- Liebenberg, Sandra “The Protection of Economic and Social Rights in Domestic Legal System”, in Asbjørn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*. Second Revised Edition, Martinus Nijhoff Publishers, 2001.
- Murati, Valon, “Kosovo between International Administration, National Efforts for Statehood and Parallel Structures: Consequences for Human Rights and Democracy”, in Wolfgang Benedek, *Lessons (not) Learned with Regard to Human Rights and Democracy: A Comparison of Bosnia and Herzegovina, Kosovo and Macedonia*. European Academy Press, 2009.
- Nolte, Georg, “Human Rights Protection against International Institutions in Kosovo: The Proposals of the Venice Commission of the Council of Europe and their Implementation”, in: Dupuy et al (eds.), *Common Values in International Law*, Festchrift fur Christian Tomuschat. Engel, 2006.
- Novak, Manfred, “The Right to Education”, in Asbjorn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*. Second Revised Edition, Martinus Nijhoff Publishers, 2001.
- Nowak, Manfred, *Introduction to the International Human Rights Regime*, Leiden/Boston, 2003.
- Nowak, Manfred, *U.N. Covenant on Civil and Political Rights: CCPR Commentary (2<sup>nd</sup> revised edition)*, N. P. Engel, Publisher, 2005.
- Paglione, Giulia, “Domestic Violence and Housing Rights: A Reinterpretation of the Right to Housing”, *Human Rights Quarterly*, Vol.28, No.1, February 2006.
- Piovesan, Flavia, “Social, Economic and Cultural Rights and Civil and Political Rights”, *SUR International Journal on Human Rights*, Year 1, No.1, 1-st Semester, 2004.

- Reka, Blerim, *UNMIK as an International Governance in Post-War Kosovo: NATO's Intervention, UN Administration and Kosovor Aspirations*. Logos-A, 2003.
- Riedel, Eibe, Gilles Giacca and Christophe Golay, (eds.), *Economic, Social, and Cultural Rights in International Law: Contemporary Issues and Challenges*. Oxford University Press, 2014.
- Riedel, Eibe, Gilles Giacca and Christophe Golay, “The Development of Economic, Social, and Cultural Rights in International Law”, in Eibe Riedel, Gilles Giacca and Christophe Golay, (eds.), *Economic, Social, and Cultural Rights in International Law: Contemporary Issues and Challenges*. Oxford University Press, 2014.
- Roach, Kent, “The Challenges of Crafting Remedies for Violations of Socio-economic Rights”, in Malcolm Langford (ed.), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*. Cambridge University Press, 2008.
- Robinson, Fiona, “Beyond Rights and Duties: Building Attachments and Focusing Moral Attention on World Poverty”, in Sarah Owen Vandersluis and Paris Yeros (eds.), *Poverty in World Politics*. Macmillan Press in association with Journal of International Studies, 2000.
- Roosevelt, Franklin D. State of the Union Message to the Congress, 11 January 1944, in:  
[http://www.fdrlibrary.marist.edu/archives/address\\_text.html](http://www.fdrlibrary.marist.edu/archives/address_text.html).
- Saul, Ben, David Kinley and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials*. Oxford University Press, 2014.
- Scheinin, Martin, “Economic and Social Rights as Legal Rights,” in Asbjørn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*. Second Revised Edition, Martinus Nijhoff Publishers, 2001.
- Scheinin, Martin, “The Right to Social Security”, in Asbjorn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and*

*Cultural Rights: A Textbook.* Second Revised Edition, Martinus Nijhoff Publishers, 2001.

- Sen, Amrtya, *Development as Freedom*. Anchor Books, 1999.
- Stadlmayer, Gabriele Kucska, *Constitutional Review in Austria: Traditions and New Developments*, discussion held at the International Conference dedicated to the 20<sup>th</sup> anniversary of the Constitutional Court of Rumania, 2012 (see in <http://www.ccr.ro/ccr0ld/relations/LUCRARI/Prof.%20Gabriele%20Kucska-Stadlmayer.pdf>).
- Statovci, Ejup *Të drejtat, liritë e njeriut dhe sklavërimi (Human Rights, Liberties and Slavery)*. Bota e Re, 1999,
- Steiner, Henry J. and Philip Alston, *International Human Rights In Context: Law, Politics, Morals*. Oxford University Press, 2000.
- Stelzer, Manfred *The Constitution of the Republic of Austria: A Contextual Analysis*. Hart Publishing, 2011.
- Sunstein, Cass, “Against Positive Rights: Why Social and Economic Rights Don’t Belong in the New Constitutions of Post-Communist Europe”. *East European Constitutional Review*, Vol.2, Winter, 1993.
- Toebe, Brigit “The Right to Health”, in Asbjorn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook* Second Revised Edition, Martinus Nijhoff Publishers, 2001.
- Tomuschat, Christian, *Human Rights: Between Idealism and Realism*, Oxford University Press, 2003.
- Ubale, Bausaheb, “Human Rights, Poverty and Development”, *Development Express*, No.1, 1999/2000, (see in [www.acdi-cida.gc.ca](http://www.acdi-cida.gc.ca)).
- Vandersluis, Sarah Owen and Paris Yeros (eds.), *Poverty in World Politics*. London: Macmillan Press in association with Millennium: Journal of International Studies, 2000.
- Vasak, Karel, "Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights", *UNESCO Courier* 30:11, Paris: United Nations

Educational, Scientific, and Cultural Organization, November 1977.

- Vierdag, E.W., “The Legal Nature of the Rights Granted by the International Covenant on Economic, Social and Cultural Rights”. *Netherlands Yearbook of International Law*, Vol. IX, 1978.
- Whelan, Daniel J., and Jack Donelly, “The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight”, *Human Rights Quarterly*, Vol.29, No.4, 2007.
- Young, Katharine G. *Constituting Economic and Social Rights*. Oxford University Press, 2012.
- Zogaj, Albert, Qerkin Berisha and Valon Murati, *Të Arriturat dhe të Metat e Sistemit Juridik të Kosovës: Të Drejtat e Njeriut dhe Integrimet Evropiane (The Achievements and Deficiencies of the Judicial System in Kosovo: Human Rights and European Integration)*, Qendra për të Drejtat e Njeriut të Universitetit të Prishtinës, 2007.
- Zymberi, Gentian, *E Drejta Ndërkombëtare e të Drejtave të Njeriut (International Law of Human Rights)*. Botimet Art, 2011.

### **Official international, regional and national documents, reports, strategies and other materials**

- Additional Protocol to the European Social Charter, 1995.
- Austria and the European Social Charter, in [http://www.coe.int/t/dghl/monitoring/socialcharter/countryfactsheets/Austria\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/countryfactsheets/Austria_en.pdf).
- Basic Law for the Federal Republic of Germany, in <https://www.btg-bestellservice.de/pdf/80201000.pdf>.
- Basic Law of 21 December 1867 on the General Rights of Nationals in the Kingdoms and Länder represented in the Council of the Realm,  
<http://www.vfgh.gv.at/cms/vfghsite/english/downloads/englishverfassung.pdf>.

- Committee on Economic, Social and Cultural Rights, Concluding Comment: UNMIK, (18.11.2008), E/C.12/UNK/CO/1.
- Committee on Economic, Social and Cultural Rights, Concluding Observations: Austria, E/C.12/AUT/CO/4, (13 December 2013).
- Committee on Economic, Social and Cultural Rights, Concluding Observations: Austria, E/C.12/AUT/CO/3, (25 January 2006).
- Committee on Economic, Social and Cultural Rights, Concluding Observations: Austria, (14 December 1994), E/C.12/1994/16.
- Committee on Economic, Social and Cultural Rights, General Comment NO.3 (Fifth session, 1990), Report of the Committee on Economic, Social and Cultural Rights, UN doc. E/1991/23.
- Committee on Economic, Social and Cultural Rights, General Comment NO.9 (Nineteenth session, 1998), Report of the Committee on Economic, Social and Cultural Rights, UN doc. E/1999/22.
- Committee on Economic, Social and Cultural Rights, Implementation of the International Covenant on Economic, Social and Cultural Rights: Fourth periodic reports submitted by state parties under article 16 and 17 of the Covenant – Austria (28 July 2010), E/C.12/AUT/4.
- Constitution of the Republic of Kosovo.
- European Committee of Social Rights, Conclusions XIX-1, (2008), (Austria), (for the period 2003-2006).
- European Committee of Social Rights, Conclusions XIX-2, (2009), (Austria), (it covers the period 2003-2007).
- European Committee of Social Rights, Conclusions XIX-3 (2010), (Austria), (for period 2005-2008).
- European Committee of Social Rights, Conclusions XVII-1, (2003), (Austria), (for the period 2001-2002).
- European Committee of Social Rights, Conclusions XVIII-1 (2006), (Austria), (for period 2003-2004).
- European Committee of Social Rights, Conclusions XVIII-2 (2007), (Austria), (for period 2001-2004).

- European Committee of Social Rights, Conclusions XX-1 (2012), (Austria), (for the period 2007-2010).
- European Social Charter (revised), Part 1, ETS, No.163, Strasbourg, 3.5.1996. Federal Constitution Law of Austria, in: <http://www.vfgh.gv.at/cms/vfghsite/english/downloads/englishverfassung.pdf>.
- General Comment 29 on article 4 (State of Emergency), para.11, approved on 24 July 2001, CCPR/C/21/Rev.1/Add.11, 31 August 2001.
- International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No.16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan.3, 1976.
- Letter of 41 Kosovo's NGO's directed to Mr. Thorbjørn Jagland, Secretary General of the Council of Europe, on 29 April 2014. The letter on behalf of these organizations have been written by Leonora Kryeziu, Executive Director of Prishtina Institute for Political Studies in:  
[http://www.cpcks.org/repository/docs/Letter\\_of\\_Kosovar\\_Civil\\_Society\\_to\\_the\\_Secretary\\_General\\_of\\_the\\_Council\\_of\\_Europe.pdf](http://www.cpcks.org/repository/docs/Letter_of_Kosovar_Civil_Society_to_the_Secretary_General_of_the_Council_of_Europe.pdf) (last checked on September 2014).
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, GAUN Resolution A/RES/63/117, on 10 December 2008. This instrument can be found in: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mt\\_dsg\\_no=IV-3-a&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mt_dsg_no=IV-3-a&chapter=4&lang=en)
- Regulation 2001/9, On Constitutional Framework for Provisional Self-Government in Kosovo, 15 May 2001.
- Republic of Kosovo response to the Committee on Economic, Social and Cultural Rights, October 2008.
- Resolution 1417 (2005), Protection of Human Rights in Kosovo, Assembly debate on 25 January (3<sup>rd</sup> sitting) Doc. 10393, Report of the Committee on Legal Affairs and Human Rights, Rapporteur: Mr.Lloyd.

- Strategy for the Integration of Roma, Ashkali and Egyptian Communities in the Republic of Kosovo, December 2008 in [http://www.kryeministriks.net/zck/repository/docs/Strategy\\_for\\_the\\_Integration\\_of\\_Roma,\\_Ashkali\\_and\\_Egyptian\\_communities\\_2009-2015.pdf](http://www.kryeministriks.net/zck/repository/docs/Strategy_for_the_Integration_of_Roma,_Ashkali_and_Egyptian_communities_2009-2015.pdf) (last checked in September 2014).
- The Institution of the Ombudsperson of the Republic of Kosovo, *Twelfth Annual Report, 1 January-31 December 2012*, October 2013, Prishtina. (see report in [http://www.ombudspersonkosovo.org/repository/docs/55778\\_Raporti\\_2012\\_510651.pdf](http://www.ombudspersonkosovo.org/repository/docs/55778_Raporti_2012_510651.pdf), last checked on 21 January 2014).
- UNDP, *Human Development Report 2000: Human Rights and Human Development*,
- Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).
- World Conference on Human Rights: Vienna Declaration and Programme of Action, UN doc. A/CONF.157/23.

## Cases

- Airey v.Ireland, App.No.6289/73, Eur.Ct.H.R. (1979), parag.26, p.12.
- Belgian Linguistic Case (No.2) 1 EHRR 252; App.No.1474/62; 1677/62; 1769/63; 1994/63; 2126/64.
- Dulas v. Turkey, App.No.25801/94, Eur.Ct.H.R. 60 (2001).

## Interviews

- Interview with Agon Vrenezi, who is expert on human rights and legal issues. He has worked for many years for different international organizations, including OSCE and OHCHR offices in Prishtina. Interview was conducted in September 2014. Interview is in author's file.

- Interview with Behxhet Shala, Executive Director of the CDFHR. Interview was conducted on 1<sup>st</sup> September 2014 in Prishtina. Interview is in author's files.
- Interview with Habit Hajredini, director of the Office of Good Governance and Human Rights in the Office of Prime Minister of Kosovo. Interview was conducted on 3 September 2014 in Prishtina. Interview is in author's file.
- Interview with Hajredin Kuçi was conducted on 4 February 2009 in Prishtina for article of Murati, Valon, "Kosovo Between International Administration, National Efforts for Statehood and Parallel Structures: Consequences for Human Rights and Democracy", in Wolfgang Benedek, *Lessons (not) Learned with Regard to Human Rights and Democracy: A Comparison of Bosnia and Herzegovina, Kosovo and Macedonia*. European Academy Press, 2009.



# **Politics of identity and ethnic relations in Kosovo**

**Bekim BALIQI, PhD**

**Associated Professor, Department of Political Science,  
University of Pristina**

Pristina, September 2014

## **Abstract**

---

The article explores the issue of identity politics and of a multi-ethnic society, by looking at the state iconography, the citizenship issue as well as at peace negotiations based on Kosovo as a case study. The theoretical framework is based on the power-sharing model known as consociationalism democracy. Research methods applied here are based mainly in discourse analysis and in content analysis of relevant documents, literature and other sources. The inter-ethnic relations between Serbs and Albanians will be traced historically from the period after the Second World War, following with the dissolution of Yugoslavia and Milosevic's regime, continuing with the post-conflict period in Kosovo through to the declaration of Kosovo's Independence. Then different levels and diverse aspects of the identity building process will be explored. Also the issues of state symbols and citizenship will be discussed as relevant research topics. The next part of research addresses negotiations between Pristina and Belgrade and their impact on ethnic relations and reconciliation efforts. Finally, the conclusions will be presented and summarized, including a brief discussion of questions of multi-ethnic society and civic identity in Kosovo.

## Introduction

The collapse of communist regimes in Eastern and South-eastern Europe was followed by the revival of nationalist activities and a recurrence of ethnic animosities. While ethnic affiliation provides a basis for political solidarity, it can also underpin resentment and conflict among ethnic groups. This kind of ethnic hatred and consequently violent conflicts were manifested in several former republics of Yugoslavia, and in particular in Kosovo. Peace building, ethnic reconciliation and democratization of these post-conflict states, depend very much on rebuilding trust between former conflicting parties but also from identity building and national unity. Therefore the sensitive issue of belonging and common political identity is one of the complexities and demanding challenges that post-conflict societies are faced with in their efforts for long term stabilization and development. The process of political and social integration and of the peaceful coexistence is a difficult and highly fragile process which is often characterized by tensions and challenges stemming from interactions of *demos* and *ethnos*, politics and justice, society and economy, culture and the past. Illustrations of these difficulties could be useful for countries-entities of the former Yugoslavia, such as Bosnia and Herzegovina, Macedonia and Kosovo, where ethnic relations still play a critical role in the political life of these societies and states. Based on the case study of Kosovo, I am trying to illustrate the complexity of the politics of identity and how this correlated with ethnic relations. This is done by posing the question ‘whether power-sharing arrangements are able to invent or ‘construct’ identity that goes beyond ethnic belongings’.

When the Kosovo government, immediately after the declaration of Independence, began to issue passports and identity cards, a public relations campaign was organized with a brief and polemic slogan "I now have identity." Since then, many years have passed and unavoidable questions like: what kind of identity it actually is, and if Kosovar citizens actually have a common identity

have not been adequately addressed and even less answered. Historically seen, in Kosovo there has been both ethnic discrimination and by a centuries-long coexistence mutual influences on folklore and culture.<sup>175</sup> However, both nationalisms - the Serbian as well the Albanian one - claimed Kosovo as own exclusive and sacral territory. Kosovo, both as a myth in historical narratives and religious terms but also as a subject of political discourse, plays a crucial role for the respective national identity and state existence. The term Kosovo - Kosova as a territorial-administrative unit has been widely used since the mid-19<sup>th</sup> century in the Ottoman Empire as a province under the name "Vilayet of Kosova", suggesting that Kosovo not only as a plain geographical, but also as a political notion was existent for a long time.<sup>176</sup> But the fall of the Ottoman Empire and founding of the first Yugoslavia mark also the beginning of the ethnic cleavages between Serbs and Albanians in the following decades lasting until the recent armed conflict of 1998/99.

The violent conflict in the Balkans exposed in a tragic way, that ethnicity is a fundamental component in the collective identity formation and that this rigid ethnic belonging can lead to ethnocentrism and chauvinism. In this sense, one of the key challenges in Kosovo's state-building process is to gain legitimacy of the state not exclusively along ethnic origins but merely on political and civil basis. This effort depends on the normalization of ethnic relations, democratization and overall consolidation of the state that consequently could lead to the Kosovar identity<sup>177</sup> formation. It is very difficult to conclude here whether this Kosovar identity will come as a result of a multi-ethnic society, civic nationalism or patriotic constitutionalism approach or even a combination of all. But, the central questions which are raised here are: how are ethnic

---

<sup>175</sup>Noel Malcolm, *Kosovo. A short History*: New York, New York University Press, 1998, pg.11ff. or,

Karl Kaser, "Im Land der Großfamilien. Die albanische Kultur zwischen Tradition und Moderne". pg.102-121, in: Thomas Schmidt (Ed.): *Krieg im Kosovo*. Hamburg, Rowohlt, 1999.

<sup>176</sup>Malcolm, pg. 188

<sup>177</sup>Not defined here in national or cultural but rather in political/state terms.

relations related to identity building process and vice versa, and can consociationalism democracy influence this identity formation process? In order to find answers to these questions, we will look closer on the influence symbols, citizenship and negotiations between Serbia and Kosovo have on these processes.

## 1. Theoretical framework

Multi-ethnic states face immense difficulties and challenges to build sustainable peace and to establish a democratic society and institutions. Deeply divided societies, with a high level of ethnic polarization among communities, are widely regarded to be more exposed to violent conflicts or more specifically to conflicts of ethnic nature. According to Tajfel and Turner, identity, be it national or ethnic, is a function of one's group membership. This identity is made ever more salient by focusing on the positive characteristics of that group, which supposedly are not possessed by members of other groups. In this context, when ethnicity is constitutional part of the identity and when that identity is threatened in some way, then ethnocentrism is a result.<sup>178</sup> That consequently led to conflicting identities, whereby justification of one side identity was in complete rejection of the identity of the other side, as was the case in the conflict in Kosovo.

The issue of how political settlements are to be adopted in divided and/or post-conflict societies have received growing attention not only in the academic world, but also in decision-making circles of international community. Therefore, the crucial challenge for peace building and polity settlement in Kosovo was: how to solve conflict in this divided society and how to arrange institutions that manage ethnic relations between former conflicting groups? One of the most

---

<sup>178</sup>Tajfel, H. / Turner, J. C., "The social identity theory of inter group behaviour". In S. Worschel & W. Austin (Eds.), *Psychology of inter group relations*. Chicago: Nelson Hall 1986.

prominent models of solutions is that of consociational democracy, which includes institutional, constitutional, electoral and power sharing arrangements. It was first identified by Arend Lijphart in his seminal work “Democracy in Plural Societies: A comparative exploration.”<sup>179</sup> Although the focus in this book was mainly in mitigating tensions in democratic societies, analysis seems to be useful also for states in transitions especially in the post-conflict societies. It could include various arrangements, including models of grand coalition governments in which all ethnic groups are represented, segmental autonomy (as in case of Kosovo through decentralization of local government according to the so called Ahtisaari Plan), election proportionality and minority veto.<sup>180</sup> It may involve following types of practices: territorial autonomy and federal or confederal arrangements, communal federations in ethnic basis, proportional representation in administration, proportional electoral system and consensus decision rules, legal framework and guarantee of minority rights etc.<sup>181</sup> Consociationalism is an approach to democratic development in divided societies, emphasizing elite cooperation and institutional engineering by the creation of stable multi-ethnic coalition government.

Kosovo’s state-building, created as a result of an internationally negotiated plan, through Comprehensive Proposal for Kosovo Status Settlement also known as Ahtisaari’s Plan, entails these ‘power-sharing’ arrangements, hence could serve as appropriate example of consociational model.<sup>182</sup> In terms of electoral arrangements, as consociationalism suggests, Kosovo applies the proportional electoral system that enable ethnic groups to be represented in the parliament in proportion to their numbers and non-majority groups have additional guaranteed and over-proportional number of twenty seats in the

---

<sup>179</sup> Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration*, New Haven: Yale University Press, 1977.

<sup>180</sup>Ibid.

<sup>181</sup>Timothy D. Sisk, *Power Sharing and International Mediation in Ethnic Conflicts*, Washington, D.C.: US Institute of Peace, 1996 pg.47-67.

<sup>182</sup>Comprehensive proposal for Kosovo Status Settlement, United Nations S/2007/169/Add.1

Kosovo's parliament. Introduction of the electoral proportional system, with additional protection of communities through reserved seats as well as imposing minority participation in executive institutions are some of the main consociational mechanisms in the process of state building in Kosovo. Constitutional design is also in spirit of consociational democracy, whereby the Republic of Kosovo is defined as multi-ethnic state and provides specific right for non-majority communities. The questions that need to be considered in this respect are: does consociational democracy offer equal representation and rights for all, and thus contribute to the creation of a shared civic identity, or does it contribute to the further and greater ethnic division? Some scholars raise similar concerns, stating that the power-sharing arrangements can impose habits of ethnic competition and distrust into newly emerging institutions that can hardly or cannot at all manage conflict.<sup>183</sup>

Although the idea of consociational democracy is to encourage inter-group or inter-ethnic trust through a culture of co-operation which begins with political elites and continues to all communities' members, it tells very little about the identity issue. Among factors which improve chances of successful implementation of consociational democracy, according to Lijphart, is also the external threat. Lijphart argues that a threat to the state from an external power serves to unite the disputing factions, giving them common cause against a mutual enemy and helping to forge a common identity.<sup>184</sup> As a matter of fact, in the case of Kosovo, external threat (mainly coming from Serbia that strongly opposes Kosovo's statehood) plays a counter-effect in building a common supra-ethnic identity. Moreover, potential threat from another country (in this case from Serbia) only increases ethnic division and political mobilization along ethno-national lines. In this regard, consociationalism democracy through above mentioned mechanism seems to support promotion of multi-

---

<sup>183</sup>Chandra Lekha Sriram, *Peace as Governance- Power-Sharing, Armed Groups and Contemporary Peace Negotiations*, Basingstoke Palgrave 2008, pg. vi.

<sup>184</sup>Lijphart p.160

ethnic identity implicitly through institutional and political cooperation between ethnic groups. But it does not tell clearly what kind of identity politics should be implemented and how ethnic relations can develop beyond these power-sharing settlements. It is also unclear whether power-sharing strengthens or weakens loyalties and commitment to the state and political unity?

Therefore, to explore identity issue and ethnic relations, the article will examine official state symbols such as for example state flag, anthem, seal, discourses about them and the citizenship issue through a more semiotic and interpretative approach.

## 2. The Challenges of a Kosovar identity

There are dozens of theoretical approaches that deal with identity building, be it national, religious or ethnic one. The discussions on identity issues have different connotations, depending considerably by context and academic discipline. Because of time and space limitations, we will briefly discuss the main challenges and developments of Kosovar identity that is of state or civic identity that goes beyond ethnic belonging without denying it. According to Janusz Bugajski, from the Washington based think-tank “Center for Strategic Studies”, there are three variants or notions of Kosovar Identity: the first one as a subdivision of the Albanian national identity, the second one as a separate and emerging national identity, and the third and his preferable type is the citizen’s identity independent from ethnicity but to state loyalty.<sup>185</sup>

Identities always exist due to something that groups have in common, because without certain shared similarities (or, at best, several) societies and communities can not emerge. According to the anthropologist Karl Kaser, in the case of South-eastern Europe, the following criteria are considered as constitutive components for the

---

<sup>185</sup>Janusz Bugajski, “Democracy, Multi-Ethnicity and Kosovar Identity”, OSCE Conference: Pristina, 28 May 2002

respective national identity building: spoken and written language, religion, and a common history.<sup>186</sup> However, these components are neither the only ones nor sufficient for determining a national identity. State institutions, political structures, economic conditions and other factors also play a very important role in the formation of national identities. An effort to emerge a political and social unit based on a common identity is often described as nation-building. As the nation and the state, also nation-building and state-building are not identical, they refer to two different processes, but which are in a mutual and conditional relationship. For post-conflict societies one of the main challenges is to promote complementary processes of state-building and nation-building, which is a difficult enterprise in divided societies.

As mentioned above, the emphasis of ethnicity because of different political attitudes, armed conflict, historical narratives, collective memories and of opposite public discourses, are some of the reasons that make the emergence of a multi-ethnic or citizen identity a difficult and complex endeavor. An identity that overcomes ethnic cleavages and does not reject ethnicity but subsumes it under a larger identity and a common purpose. It is precisely the development of a Kosovar identity that provides the possibility to consolidate a democratic and peaceful society, as well as stable and effective institutions. Identity that could overcome ethnic division and conflict, or as it is described in the optimistic view by Anderson: „*The Kosovar identity will therefore be strengthened along with the strengthening of the self-governance institutions. The Kosovar identity has thus the potential of transcending the widespread ethno-nationalist politics in Kosovo, first of all among Albanians, but on longer-term also the Serbs. This process is however more or less an unconscious process, as there is an internal censorship within the UN administration about*

---

<sup>186</sup>Karl Kaser, “Im Land der Großfamilien. Die albanische Kultur zwischen Tradition und Moderne”, pg. 233. in: Thomas Schmidt (Eds.): *Krieg im Kosovo*. Hamburg, Rowohlt, 1999

*discussing any issues that may alter the UNSCR 1244 interim status of Kosovo.*”<sup>187</sup>

With the institution building and democratization process in the newly independent state, important steps for polity arrangements and improvement of ethnic relationships have been undertaken. With the ratification of the Constitution by Kosovo's Parliament also the normative foundations for the emergence of a political community of Kosovars were established. In the first article of the Constitution, the Republic of Kosovo is defined as a state of its citizens, implying that not the ethnic-national but the civic affiliation is proclaimed as the constitutive element of people's sovereignty.<sup>188</sup> But the election results from the open and democratic elections, held since 2001, have shown a sort of institutionalization of ethnic politics, with most electors voting along ethnic lines and the major parties gaining support exclusively from their own ethnic group.

Although such a process is difficult and latent one, important steps have been made in overcoming ethnic polarization and building multi-ethnic institutions and symbols. In order to understand the identity formation process, three development phases can be categorized here: the first period during the former Yugoslavia, when Albanians in particular were not seen as an integral part of the state but subjected to socio-economic and political segregation; in the later part of this period, from 1960s until the late 1980s Kosovo experienced tremendous development<sup>189</sup>; the second phase begins with Milosevic's regime, the abolition of the autonomous status of Kosovo and the political repression against Albanians during 1990s until the end of the war in 1999; the revocation of Kosovo's autonomy status in March 1989 was marked by an extensive effort of ethno-national

---

<sup>187</sup> Aasmund Andersen, *Transforming Ethnic Nationalism - the politics of ethno-nationalistic sentiments among the elite in Kosovo*. Ph. D. Thesis, Institute of Social Anthropology, University of Oslo, 2002, pg. 178.

<sup>188</sup> Constitution of the Republic of Kosovo, Chap. I. Art.1

<sup>189</sup> Sofos A. Spyros, “Culture, Politics and Identity in Former Yugoslavia”. pg. 251-279, in: Brian Jenkins/Sofos A. Spyros (Ed.) *Nation & Identity in Contemporary Europe*. London, Routledge, 1996

mobilization among Serbs and consequently among Albanians as well.<sup>190</sup> This period is characterized by deep distrust and strong ethnic polarizations. But in this period Albanians engaged in peaceful resistance and constituted the unrecognized ‘Republic of Kosovo’ that resulted in the development of the political identity of Kosovars.<sup>191</sup> The third phase includes post-conflict period under international administration of Kosovo by UNMIK until the declaration of independence and the recent post-independence period. During this period serious efforts were made by international organizations and mediators with various programs, to normalize ethnic relations and to reconcile the parties. The main objective of international administration was to create a democratic and multi-ethnic society.<sup>192</sup>

The Kosovar identity is then determined by the relations between ethnic groups inside Kosovo (Albanians, Serbs and other minority groups) and by relations between these single ethnic communities and other nation-states outside Kosovo (particularly Albania and Serbia). Therefore, in examining identity formation in Kosovo at least three relevant dimensions respectively ethnic relationships can be distinguished. The first dimension concerns the relationship of Kosovo Albanians to other Albanians in the region (Albania, Macedonia, Serbia and Montenegro) and in diaspora. The role of diaspora is not only because emigration makes a large part of the population - estimated at a quarter of the entire population - but also because of their immense socio-political and economic influence. Also as majority of country’s population, relation of Albanians to other ethnic communities in Kosovo determines the identity politics

---

<sup>190</sup> Andersen in this sense argues that the mobilization of ethno-nationalistic sentiments in the region must be seen as inter-connected and in the perspective of mutual mobilization in opposition to ‘the other’ - in the case of Kosovo-Albanians, in the opposition against Serbian nationalism.” Pg.3.

<sup>191</sup> „The Republic of Kosovo was a ‘state- in- embryo’, to which its people owed allegiance and paid taxes.” Howard Clark, *Civil Resistance in Kosovo*. London, Pluto Press, 2000, pg.117.

<sup>192</sup> Sven Gunnar Simonsen, ‘Nation-building as Peacebuilding: Racing to Define the Kosovar’, in: *International Peacekeeping*, Nr.2 Vol.11 2004, pg.291

and interethnic relations. The second dimension concerns the relationship of Kosovo Serbs to Serbia but also to Kosovo Albanians and other ethnic communities living in Kosovo, as Kosovo Turks, Bosniaks, Gorani, Ashkali, and Roma. Also this dimension is of crucial importance for the development of a multi-ethnic society.<sup>193</sup> It is worth to mention that ethnic relations were mainly dominated by tense relations between Albanians and Serbs, while cooperation between other ethnic groups remains satisfactory.<sup>194</sup> Finally, there is the question of the role and influence of the international community to the development of a Kosovar identity. Shared civic identity does not only depend on internal relations between the majority and the minorities, but also the role that these relations have towards external powers and vice versa.

There is a lack of surveys conducted in Kosovo that would provide empirical evidence about how or to what extent ethnic relations have influenced development of identity formation. But most likely improvement of these relations will have an impact on state legitimacy and will affect political unity. Apart from that, manifestation of a common civic identity through state iconography, ceremonies and sports or cultural events is increasingly taking place. Although ethno-national flags (Albanian or Serbian) are still present in most cultural or traditional events or in election campaigns.

### 3. State Symbols

Symbols are means of identification; moreover they are a constitutive element of identification. The states and nations are represented through their own and distinctive symbols; this make them more apparent and can increase commitment of the citizens to their state. As prominent Nationalism scholar Montserrat Guibernau explains:

<sup>193</sup> See. Anna Matveeva/Wolf-Christina Paes, *The Kosovo Serbs: An ethnic minority between collaboration and defiance*, BIIC, Bonn June 2003

<sup>194</sup> See International Crisis Group ‘Kosovo’s Ethnic Dilemma. The Need for a Civic Contract’, Balkans Report No. 143, 28 May 2003

*„Symbols not only stand for or represent something else, they also allow those who employ them to supply part of their meaning, they do not impose upon people ‘the constraints of uniform meaning’.”<sup>195</sup>* Thus, the symbolic components have a functional task; they link and unite members of a community separating them from the others defined by other symbols. In other words, symbols represent and manifest the identity of a particular community. Especially in post-conflict and divided societies, symbols are closely linked to national myths and narratives and serve as an integral part of daily political discourse.

In order to reconcile ethnic groups and create preconditions for a democratic and multi-ethnic society, international community (UNMIK, OSCE and KFOR) initially used own symbols in public institutions and gradually proclaimed ‘neutral’ to any ethnic symbols. The Kosovo Police Service (KPS) was the first institution that introduced a symbol (the geographical projection of Kosovo), as a supra-ethnic icon which could be acceptable for all ethnic communities. Later on also the Kosovo Protection Corps (KPC) and many other institutions and authorities used that symbol as its own representation emblem. The United Nations Mission in Kosovo (UNMIK) established an approved coat of arms for the Provisional Institutions of Self Government in July 2003, in accordance with its administrative direction.<sup>196</sup>

Similar to the controversies about the national histories and identity issue, also the debate about state symbols such as the flag, coat of arms and anthem were and still are politically very sensitive themes. The fear of “replacements” of existing ethno-national symbols is perceived by both ethnic communities as a national betrayal.<sup>197</sup> But

---

<sup>195</sup> Montserrat Guibernau, *Nationalism. The Nation-State and Nationalism in the Twenty-first Century*. Cambridge, Polity 1996, pg. 81.

<sup>196</sup> UNMIK Administrative Direction No.2003/15, see:

[http://www.unmikononline.org/regulations/admdirct/2003/ade2003\\_15.pdf](http://www.unmikononline.org/regulations/admdirct/2003/ade2003_15.pdf)

<sup>197</sup> For more on this debate see; Bekim Baliqi,

*ZurFragedernationalenIdentitätamBeispiel des Kosovos*, Dipl. Arbeit , Universitat Wien 2005 pg.110-124.

attempts and initiatives to establish own state symbols were not really absent: thus the Kosovo Albanian leader and first Kosovo's president, Ibrahim Rugova, introduced in October 2000, a "state" flag and anthem of Kosovo. The flag was blue, inscribed with a red disc with a golden ring. Inside the red disc is the Albanian eagle. The eagle is holding a ribbon with the legend "Dardania" inscribed. Dardania is the name of an ancient Illyrian tribe and region in the area as it is Kosovo nowadays. Also the song "Kur ka ra kushtrimi n'Kosove" composed by Rauf Dhomí was presented as the official anthem of the Republic of Kosovo. However, these symbols were not accepted by all political forces and did not gain much popularity of the broad mass. But it is still used as an unofficial presidential standard and often by the Democratic League of Kosovo (LDK), the political party founded by Rugova.

In June 2007, the Assembly of Kosovo decided to announce an international competition for the design of state symbols including flag, anthem and coat of arms, which attracted almost one thousand entries. The preconditions were, as foreseen by Ahtisaari plan that these symbols could not be the same or similar to national symbols of other states, which mean that the Albanian and Serbian two-headed eagle and the use of the color combinations red-black or blue-white-red are not allowed. The Ahtisaari's Plan for Kosovo provides following proposal: „*Kosovo shall have its own, distinct, national symbols, including a flag, seal and anthem, reflecting its multi-ethnic character.*”<sup>198</sup>

The flag of Kosovo was adopted by the Assembly immediately following the declaration of independence of the Republic of Kosovo on 17. February 2008. It has a blue background, charged with a map projection of Kosovo and six stars in an arc above. The stars are officially meant to symbolize Kosovo's six major ethnic groups.<sup>199</sup> The flag symbolize also a multi-ethnic character of the state, as

---

<sup>198</sup> The Comprehensive Proposal for Kosovo Status Settlement, Article 1.7

<sup>199</sup> See. Gezim Aliu: "Flamuri i ri. Tri Interpretive", 20. February. 2008 in: <http://www.telegrafi.com/?id=26&a=247> (access on 21.05.2014)

defined by the constitution.<sup>200</sup> Also the coat of arms was adopted by the parliament on the same day and is identical with content of the flag, with the difference that it is placed on a rounded triangular shield and has a golden rim. National anthem of the Republic Kosovo titled “Europe” was adopted by Assembly of Kosovo in 11 June 2008. The anthem has no lyrics and contains no references to any specific ethnic group with the intention to avoid possible misinterpretations and refusal.

Similar to the debate about the state flag, discussions in the public opinion about the anthem were controversial, because it was perceived as imposed from foreigners and opposed the "national values" and as such was an attempt to replace the “real” ethno-national anthem (of Albanians). This is due to the fact that Kosovar Albanians as majority population consider that these symbols do not reflect their political will and cultural legacy, whereas other communities and mostly Kosovo Serb minority perceive this as a threat of domination or assimilation. Because of their strong political connotation over a long period, national symbols of ethnic communities will continue to play a significant role. Better acceptance and sentimental ties with the state symbols can develop together with the growing state legitimacy and in the longer term.

On the day of declaration of independence, a monument in yellow color making the word in English language ‘Newborn’ with its metaphorical meaning was inaugurated in downtown Pristina. In the process of normalization of ethnic relations and socio-political integration towards shared civic identity, supra-ethnic symbols are important yet insufficient steps. As a matter of fact, narrative and educational aspects on and about identities are critical in this process. Thus ethnic relations in Kosovo are characterized by opposing and antagonistic view of symbols and identities. In this context, moving from the ethnicity as a rigid and basic determinant of the belongings to the more open and multilayer civic identity is not only a constitutive

---

<sup>200</sup>Constitution of the Republic of Kosovo, Chap. I, Art. 6

element in the state building but also in the peace building and democratization process.

#### 4. Citizenship and multi-ethnicity

Because of the unresolved status, also the citizenship issue in Kosovo was for a long period uncertain. During the UNMIK administration citizens of Kosovo were defined only as residents not as citizens of Kosovo. Immediately after the declaration of independence of Kosovo, the Assembly adopted the Law on Citizenship, which allows dual citizenship and does not involve any ethnic preconditions. Indeed, the law is ethnically neutral, addressing only the issue of citizenship (*shtetësia, državljanstvo*) but not nationality in the legislation. It is in the spirit of Ahtisaari's Plan for an inclusive society and reflects attempts of international community to build a democratic and multiethnic state. However, its controversy is that it gives more space and rights to communities, that are based merely and exclusively on ethnic affiliation and not on citizenship. Hence, this legislation does not use the term Kosovars in any of its provisions. The first Chapter (Basic Provisions) of the Constitution of the Republic of Kosovo states the following: "*The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions.*"<sup>201</sup>

The concept of citizenship implies a commitment to a sovereign state; this contains and establishes rights, duties, status and loyalty for all its citizens regardless of their ethnic origin. But the identity politics in Kosovo in its confusion of the "ethnicity" concept, does not promote citizenship as loyalty and responsibility to a state. The civic and multi-ethnic concept should be encouraged building on cultural, political and ethnic diversity, for the citizens of Kosovo to define themselves, instead by their ethnic affiliation. Thus citizenship also

---

<sup>201</sup>Constitution of the Republic of Kosovo, Chap. I, Art. 3.

raises the question of the socio-political integration and identity politics. The process of formation of a Kosovar identity through citizenship, similar to all post-conflict societies, encounters significant difficulties in consolidating its statehood and constituting the initial body of its citizens. However, it is the political "we-feeling" among Kosovo citizens that is progressively increasing - with the partial exception of the Kosovo Serbs in the North of the country. In this sense, Simonsen earlier recognized that:

*"Nation building in Kosovo that encompasses not only the Albanians (inclusive nation building) may seem far-fetched since majority and minority members barely come close enough to talk anymore. However, it is useful to see nation building as a wider span of processes than what normally occurs. In such a perspective a sense of community among citizens may be virtually absent, but there may nevertheless be structures and policies at play facilitating its development".<sup>202</sup>*

With regard to the citizenship that is regulated constitutionally, citizens of Kosovo have a legal status and may travel, identify and represent their state abroad but it is not sufficient to build a strong tie between citizens and the state. Bearing in mind *de facto* statelessness during the period of 'parallel system' in the 1990s and *de jure* statelessness during the UNMIK administration until 2008, citizenship regime in the newly independent state provides an opportunity to develop a common political body and state unity. However, it still remains open if citizenship as a formal membership in a state is sufficient to forge and consolidate a Kosovar identity.

## 5. Peace negotiations and ethnic relations

Dealing with the past is often politically misused by both ethnic communities beginning from school and street names to the public and

---

<sup>202</sup>Simonsen, pg.291

academic discourses. The trauma of war, past events and the self-perception as victims, play a crucial role in the definition of ethnic relations and therefore in the identity building process. The lack of appropriate transitional justice particularly dealing with war crimes is an additional obstacle in building trust among communities and consolidating a common political identity. Only after the end of armed conflict and setting of UN administration, the efforts for peace negotiations toward conflict resolution and ethnic reconciliation could really take place.

Since the dissolution of Yugoslavia, series of international negotiations have attempted to resolve the question of Kosovo status and to improve or normalize ethnic relations. As Marc Weller precisely puts in: *“The international administration of the crisis, from the virtual abolition of Kosovo’s autonomy by Slobodan Milosevic in 1988 to the territory’s declaration of independence in 2008, drew on virtually the entire arsenal of international conflict management tools, from negotiation to good offices, conference diplomacy, mediation and even coercive diplomacy – including the threat, and eventual use, of force.”*<sup>203</sup>

After international negotiations between Serbia and Kosovo’s delegations in 1998, at the French castle of Rambouillet, finally failed, the course of the events in Kosovo took a dramatic turn. NATO strikes against Serb forces that lasted for full 78 days began and resulted in the ultimate withdrawal of Serbian forces and regime from Kosovo, and the short but brutal war was ended. Based on the resolution 1244 of the UN Security Council, Kosovo came under the Interim Administration Mission of the United Nations, gradually building self-government institutions and capacities but leaving in limbo the final status of the country. The international administration over the years became not only ineffective, but also a problem to the governance and the democratic processes of the country. Final resolution of the legal and political status of Kosovo was required not only by majority of

---

<sup>203</sup> Marc Weller, ‘Kosovo’s final status’, in: *International Affairs*, 84 (6) 2008, pg. 1239.

Kosovars, but also from the international community and its main stakeholders.<sup>204</sup> In this regard, in the beginning of 2006 negotiations between Kosovo and Serbian political representatives were launched, known as Vienna negotiations. After 14 months of diplomatic negotiations and after Serbia's rejection of the "Ahtisaari Package" proposal, the special envoy presented to the Security Council a comprehensive proposal, which requires supervised independence for Kosovo.<sup>205</sup>

Because of the new context created after Kosovo's statehood, Belgrade and Prishtina continued their tense relations, despite the many open issues between them that required solutions. Following the adoption of a joint resolution of Serbia and the EU at the UN, talks started between Kosovo and Serbia, also known as technical talks, taking place from 8 March 2011. On 19 April 2013, a 15-point agreement, qualified as historic, was reached between the Prime Minister Thaqi and his Serbian counterpart Dacic known as "The First Agreement of Principles Governing the Normalization of Relations" which envisaged creation of the Association of Municipalities with a Serbian majority population and its powers, abolition and integration of parallel structures of security and justice within Kosovo structures, the organization of local elections in northern par in accordance with Kosovo legislation, resolving energy and telecommunications issues and the formation of working committees that will implement these points.<sup>206</sup> Despite heated political discussions about this agreement, the Assembly of Kosovo in June of the same year ratified the agreement with 84 pro, 3 against and 1 abstention vote. Even the Kosovar public opinion, which was quite confused, supported the deal with 43% pro and 38% against, while 19% refused to answer a survey

---

<sup>204</sup>See. Morag Goodwin, 'From Province to Protectorate to State? Speculation on the Impact of Kosovo's Genesis upon the Doctrines of International Law'. in: *German Law Journal*, Special Issue – What Future for Kosovo? Vol.8 No.1, 2007

<sup>205</sup>See. Marc Weller, "The Vienna negotiations on the final status for Kosovo". In: *International Affairs*, 84: 4 (2008) 659–681

<sup>206</sup>Koha Ditore, "The Kosovo-Serbia agreement is signed", 19. April 2013

on this issue.<sup>207</sup> Also the measurements of public opinion from last year indicate that Serbian and Albanian citizens perceive positively ethnic relations and mutual confidence is improving and increasing.<sup>208</sup>

Normalization of ethnic relations and eventually reconciliation requires the development of the society, economic prosperity and mutual trust between ethnic groups. Therefore, reconciliation goes beyond conflict resolution and addresses the social and emotional barriers to improve ethnic relations. In this context, peace negotiations influence ethnic relations and consequently identity formation process. But it is early to predict how and to what extent the negotiations will impact the identity process.

## Conclusion

The politics of identity has many facets, because identity issues are very complex. Taken into account, that in post-conflict Kosovo ethnic groups are still divided, ethnic relations have not improved sufficiently consolidation of the Kosovar identity. Although, constitution and institutional arrangements define Kosovo as a state of its citizens, the sentimental loyalty and self-identification of communities are primarily on the basis of ethnic affiliation.

This research paper and the study carried out found that despite the wide implementation of ‘power-sharing’ arrangements in accordance with the model of consociational democracy, shared civic identity has not been constituted. Consociationalism may contribute more or less to alleviating ethnic divisions through institutional engineering and political arrangements but not necessarily overcome contested identities or support consolidation of citizen identity. This due to tense ethnic relations, lack of state legitimacy, ethno-political

---

<sup>207</sup> Kosovar Centre for Security Studies(KSCSS): Kosovo Security Barometer – The Voice of Kosovo, 22 May 2013, p.10

<sup>208</sup>United Nations Development Program (UNDP): Public Pulse Report VI, Pristina, August 2013, p.18

elites, economic conditions and other factors that have important role in the formation of identity. The acceptance of state iconography as part of cultural and emotional aspect is growing gradually although national-ethnic ones are still widely used. Another aspect examined here, was the political and legal aspect around the citizenship issue that makes the basis for loyalty beyond ethnicity, but in the case of Kosovo it is still not a sufficient tool for identity building. Last but not least important in this study were the negotiations between Prishtina and Belgrade that could lead to improvement of ethnic relations and consequently to state loyalty as a precondition for the identity formation. But the main obstacles remains, Belgrade's paternalistic attitude toward Kosovo Serbs and their refusal of Kosovo statehood. Some of the main findings is that there is lack of political will to build an identity that goes beyond ethno-national affiliation. And it remains an open question as to who really are Kosovars and how should they be defined?

## Bibliography:

---

- Aliu, Gezim: “Flamuri i ri. Tri Interpretive”, 20 February 2008.
- Andersen, Aasmund: Transforming Ethnic Nationalism - the politics of ethno-nationalistic sentiments among the elite in Kosovo. Ph.D. Thesis, Institute of Social Anthropology, University of Oslo, 2002.
- Baliqi, Bekim: Zur Fragedernationalen Identität am Beispiel des Kosovos, Dipl. Arbeit, Universität Wien 2005.
- Bugajski, Janusz: Democracy, Multi-Ethnicity and Kosovar Identity, OSCE Conference, Pristina, 28 May 2002.
- Clark, Howard: Civil Resistance in Kosovo. London, Pluto Press, 2000.
- Comprehensive proposal for Kosovo Status Settlement, United Nations.
- Constitution of the Republic of Kosovo.
- Goodwin, Morag: From Province to Protectorate to State? Speculation on the Impact of Kosovo's Genesis upon the Doctrines of International Law, in: German Law Journal, Special Issue – What Future for Kosovo? Vol.8 No.1, 2007.
- Guberna, Montserrat: Nationalism. the Nation-State and Nationalism in the Twenty-first Century. Cambridge, Polity 1996.
- International Crisis Group: Kosovo's Ethnic Dilemma. The Need for a Civic Contract. Balkans Report No. 143, 28 May 2003.
- Jenkins, B./Sofos, S. A. (Ed.) Nation & Identity in Contemporary Europe. London, Routledge, 1996.
- Koha ditore, “The Kosovo-Serbia agreement is signed”, 19. April 2013.

- Kosovar Centre for Security Studies: Kosovo Security Barometer – The Voice of Kosovo, 22 May 2013.
- Lijphart, Arend, Democracy in Plural Societies: A Comparative Exploration, New Haven: Yale University Press, 1977.
- Malcolm, Noel: Kosovo. A short History: New York, New York University Press, 1998.
- Matveeva,A./Paes, W.-Ch.: The Kosovo Serbs: An ethnic minority between collaboration and defiance, BIIC, Bonn, June 2003.
- Schmidt, Thomas (Ed.): Krieg im Kosovo. Hamburg, Rowohlt, 1999.
- Simonsen,Sven Gunnar: Nation building as Peace building: Racing to Define the Kosovar, in: International Peacekeeping, Nr.2 Vol.11 2004.
- Sisk, Timothy D.:Power Sharing and International Mediation in Ethnic Conflicts , Washington, D.C.: US Institute of Peace, 1996.
- Sriram, Chandra Lekha: Peace as Governance- Power-Sharing, Armed Groups and Contemporary Peace Negotiations, Basingstoke Palgrave 2008.
- The Comprehensive Proposal for Kosovo Status Settlement.
- UNDP: Public Pulse Report VI, Pristina, August 2013.
- UNMIK Administrative Direction No.2003/15.
- Weller, Marc: Kosovo's final status. International Affairs, 84 (6) 2008.
- Weller, Marc: The Vienna negotiations on the final status for Kosovo, in; International Affairs 84: 4, 2008.
- Worschel, S./Austin, W. (Eds.), Psychology of intergroup relations. Chicago: Nelson Hall 1986.



# **Intimate partner violence among male and female students in Kosovo<sup>209</sup>**

**Kaltrina KELMENDI & František BAUMGARTNER**

**Kaltrina Kelmendi, PhD  
Senior Assistant, Department of Psychology,  
University of Pristina**

**František Baumgartner  
Institute of Psychology, Academy of Sciences of the Czech  
Republic**

Pristina, September 2014

---

<sup>209</sup> This study was supported by Institute of Psychology, Academy of Sciences of the Czech Republic, Brno, Czech Republic [RVO: 68081740]

## **Abstract**

The aim of this paper was to analyze the rates of intimate partner violence focusing on physical, psychological and sexual violence using the Conflict Tactics Scale (CTS-2) with a sample of 700 students from the main public university in Pristina. Findings from the study show high rates of perpetration of intimate partner violence; physical violence (42.1%), psychological violence (64.7%), and sexual violence (34.6%), including both minor and severe acts, with however the majority of acts being minor. Men and women reported approximately similar rates of perpetration of physical and psychological violence, except statistically significant gender differences for sexual violence perpetration. Finally, the paper discusses the prevalence rates in the socio-cultural context in Kosovo.

## **Introduction**

Although violence occurs among all age groups, students are at particular high risk for being victimized by an intimate partner. This assumption is based in findings from many studies worldwide which indicate that the university students perpetrate high rates of intimate partner violence in their relationships (Bryant & Spencer, 2003; Shook, Gerrity, Jurich & Segrist, 2000; Strauss, 2004; Amar & Gennaro, 2005; Kaukinen, Gover & Hartman, 2012; Barrick, Krebs and Lindquist, 2013). For example, physical violence ranges from 20% to 50% (Strauss & Ramirez, 2007; Bryant & Spence, 2003). Besides, research evidence suggests that more violence may occur among dating couples, as the most common relationship status among college students compared to marital unions (Strauss, 2004). As such, students are an important group to study with regards to the correlates of partner violence.

Another important issue in terms of intimate partner violence (IPV), is related to the ongoing debate among scholars known as “Gender symmetry vs. asymmetry” in perpetration and victimization.

For example, the latest meta-analytic study conducted by Archer (2002), which reviewed 58 studies conducted from 1976 to 1998, showed that there were small differences between men and women and types of IPV that they used. Findings show that men were more likely to beat up and choke their partner; whereas women more likely to throw something, slap, kick, bite, punch and hit with an object. Likewise, findings from the studies conducted by Strausss and colleagues show that IPV cases were bi-directional rather than women-only or men – only (Strausss, 2008; Strausss, 2004; Strausss & Ramirez, 2007). Findings from the International dating study conducted in 32 nations among students showed that 70% of all assaults and 60% of severe assaults were bi-directional. Similarly another study conducted by Cecerone, Beach and Arias (2005) in a sample of 414 students (mean age =19) in USA, showed that 36% of men and 39% of women reported perpetration of minor physical violence; whereas 86% of men and 89% of women reported perpetration of psychological violence. Another study conducted in Spain with university students (N=1886) (mean age =21) showed that men and women reported perpetrating similar verbal, dominant and jealousy behaviors (Munoz- Rivas, Grana Gomez, O'Leary and Lozano, 2007). Similarly a study conducted by Strausss and Ramirez (2007) among 1544 university students showed that gender symmetry was noticed on occurrence of severe psychological aggression and minor physical assault.

Other studies have shown differences in terms of perpetration of intimate partner violence. For example findings from a study conducted by Dobash & Dobash (2004) conducted with a sample of 95 respondents showed that men were more willing to report men to women violence at minor level, but the same was not true for severe violence perpetrated to women. Whereas women were less likely to report minor acts of violence perpetrated by men. Another study conducted by Caetano, Schafer, Field & Nelson (2002) in sample of 1635 couples in USA, analyzed the reports of IPV between men and women. Findings showed that men tended to underreport their perpetration or victimization experiences, compared to women.

Similar findings were found to other studies (Stets & Strauss, 1990; Edleson and Brygger, 1986; Szinovac 1983). Later study conducted by Chan, Brownridge, Tiwari, Fong, Leung & Ho (2010) using 1870 couples in Hong Kong found interesting results. The percentage of inter-spousal agreement on types of IPV perpetration ranged from 88% to 95%, indicating that there was no apparent under-reporting of violence by male respondents.

Finally, findings from the latest review paper conducted by Chan (2011) showed mixed feeling about prevalence rates of IPV across genders. Some of the explanations given were based on the gender differences on style of reporting, for example most of the studies highlighted than men tend to under-report their perpetration of IPV, whereas women tend to under-reported their victimization. However, according to Chan (2011) it could be considered that there is gender symmetry when no motives, context and consequences would be considered. But when gender specific, cultural specific and methodological factors are considered there were differences in terms of reporting styles.

In the Kosovo society, violence against women is not a new phenomenon, but it was ignored until relatively recently because of the more apparent violence that was conducted on ethnic grounds. It existed, but remained silent because it was considered as a private issue of the family, very rarely it was visible and any intervention done in the purpose of help was considered as an intrusion in the private territory (Wareham, 2000; CPWC, 2004). Findings from the study conducted in 2008 by Kosovo Women Network (KWN) illustrated that domestic violence is still considered shameful in Kosovo, which may explain why it is underreported. Forty percent of the participants agreed that violence is a normal part of their relationship, while 20% of participants declared that it is acceptable sometimes for the husband to hit his wife. Moreover, most of the studies conducted on intimate partner violence were focused on married couples or targeted samples of victims of domestic violence, and only few of them (Kadriu, 2012; UNICEF, 2014) on the dating

couples among youngsters, besides all studies treated men as perpetrators and women as victims but not reversed.

In order to address this research gap and lack of knowledge on the partner violence in Kosovo this study focused on intimate partner violence among students in Kosovo. This research is the first of its kind, and aimed to understand rates of perpetration and victimization of intimate partner violence, including both male and female students. More specifically, the study aimed to understand, if there are differences, if any, in terms of perpetration and victimization of intimate partner (physical, psychological and sexual) violence.

## **Methodology**

### **Sample**

The sample consisted of 700 students attending the University of Pristina. In terms of gender distribution, 50.7% (N=355) were males, 49.3% (N=345) were females. Average age of the respondents was  $M = 21, 77$  ( $SD=3.05$ ), no significant difference was found for age in terms of gender. In terms of studies, most of students were bachelor level students, respectively third years students were 33.7% (N=234), second year students were 26.8% (N=186) and first year students were 29% (N=201), 10.4 % (N=72) were master level students and only one was a PhD student. Most of respondents, 70.5 % (N=492) were in a relationship or dating, 17.3% (N=121) were engaged; 7.4 % (N=52) married; 4% (N=28) were currently single (but had a previous relationship) and 0.7% (N=5) divorced. Furthermore, 59.4% reported that they came from urban areas and 40.6% from rural areas. In terms of nationality 96.3% reported themselves as Kosovar Albanians and 0.3% as ethnic Kosovo Turk and 1.4% as foreign resident. The majority of participants declared belonging to Islam religion 78.4%, 20% to catholic religion, 0.6% to Protestant, 0.6% Christian Orthodox and 0.2% other.

## **Measures**

Conflict Tactics Scales Revised version (CTS2S) (Strauss, Hamby, Boney-McCoy, & Sugarman, 1996) was used for measuring intimate partner violence. CTS 2S-is the most widely used instrument in research on family violence and consists of 78 items, and it is the only instrument that differentiates between minor and severe acts of violence. Another important feature of the CTS is that it obtains separate data on victimization and perpetration. The instrument includes scales to measure three tactics used when there is conflict in the relationships of dating, cohabiting, or marital couples: Negotiation, Physical violence, Psychological violence and Sexual violence. For the purposes of this study perpetration scales related to: Physical violence, Psychological violence and Sexual violence were used.

Physical violence was measured as follows: minor (threw something that could hurt, twisted arm or hair, pushed or shoved, grabbed, slapped) and severe (punched or hit my partner with something that could hurt, choked, slammed my partner against a wall, beat up my partner, burned or scalded my partner on purpose, and kicked my partner). The reliability coefficient for physical violence was 0.86.

Psychological violence was measured as follows: minor (insulted or swore at my partner, shouted or yelled at my partner, stomped out of the room or house during a disagreement; said something to spite my partner) and severe (called my partner fat or ugly, destroyed something belonging to my partner, accused my partner of being a lousy lover and threatened to hot or throw something at my partner). The reliability coefficient for total psychological violence was 0.798.

Sexual violence was measured as follows: minor (made my partner have sex without a condom, insisted on sex when my partner did not want to (but did not use physical force), insisted my partner have oral or anal sex (but did not use physical force) and severe (used

force (like hitting, holding down, or using a weapon) to make my partner have oral or anal sex, used force (like hitting, holding down, or using a weapon) to make partner have sex, used threats to make my partner have oral or anal sex, used threats to make may partner have sex). The reliability coefficient for total psychological violence was 0.785,

The respondents of the CTS-2 scale should indicate how often they have conducted these acts against their partner, and how often their partners conducted these acts against them. The responses range from: 1 (once in the past year); 2 (twice in the past year); 3 (3-5 times in the past year); 4 (6-10 times in the past year); 5 (11-20 times in the past year); 6 (more than 20 times in the past year); 7 (not in the past year, but it did happen before); and 0 (this has never happened).

## **Procedure**

Students completed the questionnaires in their classroom and faculty libraries during the fall semester & autumn 2013. The questionnaires were administered to a convenience sample of university students in the Faculty of Philosophy, Faculty of Economics, Faculty of Education, Faculty of Medicine, and Faculty of Law, which have the highest number of students (Agency of Statistics of Kosovo, 2012). Permission for translation and administration of the questionnaire was requested accordingly. In the first step the piloting of the questionnaire was conducted and necessary revisions were made in the translated version of the questionnaire. To be included in the study, students had to be at least 18 years old and had to have been in a romantic or dating relationship for at least 1 month or longer in the previous 12 months or previously. The instructors emphasized that participation was confidential and voluntary.

## **Data analysis**

For the purpose of this study prevalence and frequency score was calculated. According to Strauss et al (1996), prevalence scores

represent scores which show whether the specific behavior was present in the scale; it is calculated by transforming the responses 1- 6 to 1, and response 7 and 0 to 0. Similarly, frequency scores based on Strausss et al. (1996) were calculated. On a scale from 0 to 6, participants ranked how many times that year they experienced the acts listed (0 = 0 times; 1 = 1 time; 2 = 2 times; 3 = 3 to 5 times; 4 = 6 to 10 times; 5 = 11 to 20 times; 6 = more than 20 times; 7 = before past year and 0=never ). According to these suggestion, raw responses are converted to frequency scores by imposing midpoint to raw values as following: 0 = 0 acts in previous year; 1 = 1 act in the previous year; 2 = 2 acts in the previous year; 3 = 4 acts in the previous year; 4 = 8 acts in the previous year; 5 = 16 acts in the previous year; 6 = 25 acts in the previous year. Moreover, severity and mutuality types of intimate partner violence score were calculated following the suggestions given by Strauss and Douglas (2004) and gender differences were elaborated. Finally correlation analysis was presented separately for male and female students.

## Results

Results show that students in this sample experienced and perpetrated high rates of physical, psychological and sexual violence in their intimate relationship. The findings for perpetration of physical violence are presented in table 1. Men reported higher perpetration rates than women, for both minor and severe violence. Interestingly, men reported higher rates of victimization as well. In terms of gender, statistically significant differences were found between males and females, only for prevalence scores of severe physical violence, both perpetration [ $\chi^2$  (1) =11.591,  $p<0.001$ ]. However, statistically significant gender differences were found in total chronicity scores for severe physical violence perpetration.

**Table 1.** Physical violence perpetration and victimization, by gender (N=700)

Perpetration scale	Total	Men	Women	Significance tests
<b>Physical violence</b>				
Prevalence %	42.1%	43.40%	40.60%	0.44
Chronicity mean (SD)	26.78 (34.97)	32.63 (40.41)	20.51 (26.72)	0.002**
<b>Minor physical violence</b>				
Prevalence %	38.4%	39.70%	37.10%	0.485
Chronicity mean (SD)	17.96 (20.92)	19.26 (22.26)	16.50 (19.29)	0.264
<b>Sever physical violence</b>				
Prevalence %	18.7%	23.70%	13.60%	0.001**
Chronicity mean (SD)	24.63 (27.84)	29.76 (29.34)	16.57 (23.40)	0.009**

\*- p<0.05; \*\* - p<0.01

Prevalence and frequency rates for perpetration of psychological violence are presented in Table 2, where in total 58.6% of the students have been victims of one or more acts of psychological violence by partner, whilst 66.4% reported having perpetrated at least one act of psychological violence against their partner. Similar to physical violence, majority of acts were minor in both perpetration and victimization scale and men reported higher perpetration rates of psychological violence in comparison to women, and this was true for both minor and severe violence.

**Table 2.** Perpetration and victimization of psychological violence, by gender (N=700)

Perpetration scale	Total	Men	Women	Significance tests
<b>Psychological violence</b>				
Prevalence %	66.4%	68.50%	64.30%	0.263
Chronicity mean (SD)	18.79 (27.43)	21.86 (22.13)	14.33 (22.75)	0.064
<b>Minor psychological violence</b>				
Prevalence %	64.7%	67.30%	62.00%	0.155
Chronicity mean (SD)	13.20 (17.46)	18.10 (20.39)	8.47 (12.51)	0.794
<b>Sever psychological violence</b>				
Prevalence %	28.1%	32.70%	23.50%	0.001**
Chronicity mean (SD)	14.64 (18.03)	14.91 (18.28)	14.04 (17.66)	0.001**

\*- p<0.05; \*\* - p<0.01

Finally, in terms of sexual violence, results show that the students in this sample perpetrated high rates of sexual violence in their intimate relationship as well. As seen in Table 3, 34.6% reported having perpetrated at least one act of sexual violence against their partner. Total rates include both minor and sever acts of violence; however, majority of acts were minor. Men reported higher perpetration rates than women, of one or more acts of sexual violence, and this was true for both minor and severe violence.

**Table 3.** Perpetration and victimization of sexual violence, by gender (N=700)

Perpetration scale	Total	Men	Women	Significance tests
<b>Sexual violence</b>				
Prevalence %	34.6%	46.50%	22.30%	0.001**
Chronicity mean (SD)	19.19 (18.44)	20.80 (18.81)	17.42 (17.90)	0.036*
<b>Minor sexual violence</b>				
Prevalence %	33.6%	46.20%	20.60%	0.001**
Chronicity mean (SD)	9.04 (12.23)	9.71 (11.68)	8.06 (12.98)	0.32
<b>Sever sexual violence</b>				
Prevalence %	11.4%	16.30%	6.40%	0.001**
Chronicity mean (SD)	16.12 (15.24)	17.49 (15.36)	14.71 (15.02)	0.043*

\*- P<0.05; \*\* - p<0.01

In terms of severity, it is interesting to observe that the highest rates of perpetration of physical violence were minor (23.4% vs. 18.70%); the same was true for psychological violence perpetration (38.3% vs. 28.10%) and sexual violence perpetration (23.10 vs. 11.40%) (See table 4).

**Table 4.** Perpetration and victimization by severity type

Perpetration	No violence	Minor violence	Severe violence
Physical violence	57.90% (405)	23.40%(164)	18.70% (131)
Psychological violence	33.60% (235)	38.30% (268)	28.10% (197)
Sexual violence	65.40% (458)	23.10% (162)	11.40% (80)

Furthermore, if we analyze the mutuality types, it is interesting to observe that most of intimate partner violence including physical violence (32.40%), psychological violence (57%) and sexual violence (30 %) was mutual (see table 5).

**Table 5.** Mutuality of intimate partner violence

Types of violence	Partner only	Self only	Both
Physical violence	2.90% (20)	9.70% (68)	32.40 % (227)
Psychological violence	3.10% (22)	9.40 (66)	57% (399)
Sexual violence	7.30 % (51)	4.6% (32)	30% (210)

In tables 6a and 6b the correlation analysis for IPV perpetration for male students and female students were presented. In terms of male students, the strongest correlation was noticed for physical violence perpetration and psychological violence perpetration ( $\rho=0.627$ ,  $p<0.001$ ), also rather strong correlation was noticed regarding sexual violence perpetration and psychological violence perpetration ( $\rho=0.445$ ,  $p<0.001$ ), followed by physical violence perpetration and sexual violence perpetration ( $\rho=0.250$ ,  $p<0.001$ ), whereas in female students the only statistically significant correlation was noticed for physical violence perpetration and psychological violence perpetration ( $\rho=0.634$ ,  $p<0.001$ ). Finally findings from this part of results show differences between male and female students in terms of correlation between forms of violence. More specifically, male physical, psychological and sexual violence were rather strongly correlated with each other, but the same was not true for female students.

**Table 6a.** Correlation analysis for IPV perpetration and victimization for males

	Physical violence perpetration	Psychological violence perpetration	Sexual violence perpetration
Physical violence perpetration	1	0.627**	0.250**
Psychological violence Perpetration	0.627**	1	0.447**
Sexual violence perpetration	0.250**	0.445**	1

\*-p<0.05, \*\*p<0.01, \*\*\*p<0.001

**Table 6b.** Correlation analysis for IPV perpetration and victimization for females

	Physical violence perpetration	Psychological violence perpetration	Sexual violence perpetration
Physical violence perpetration	1	0.634**	0.094
Psychological violence Perpetration	0.634**	1	0.024
Sexual violence perpetration	0.094	0.024	1

\*-p<0.05, \*\*p<0.01, \*\*\*p<0.001

## Discussion

In this study we examined rates of IPV perpetration among male and female students of the largest public university in Kosovo. Findings show that students, both male and female perpetrate high rates of physical, sexual and psychological violence, consistent to the findings from International Dating Violence Study (Strauss, 2004). For example, in total 42.1% of students reported to have perpetrated physical violence, 66.4% of students' perpetrated psychological violence and 34.6% of students perpetrated sexual violence. Findings show that there were no statistically significant differences in terms of

perpetration of physical and psychological violence among male and female students, indicating that male and female students perpetrate similar rates. This is an interesting finding, with special emphasis on female perpetration of physical violence, taking into account our patriarchal society and strictly defined gender roles, where females are most commonly victims. However, it should be emphasized that our sample is based on university students and education is an important factor in terms of awareness raising of female students about their rights. Furthermore, the only statistically significant gender difference was noticed for sexual violence perpetration, indicating that male students perpetrate significantly higher rates of perpetration of sexual violence in comparison to female students. However, perpetration of sexual violence was noticed among female students as well.

As it could be noticed, findings from this study show that most of violence was mutual for three types of violence, similar to other studies (Archer, 2000; Langhinrichsen-Rohling, Selwyn & Rohling, 2012). Moreover, the same findings indicate the overlap among victimization and perpetration, similar to findings from the other studies (Coker, McKeown, Sanderson, Davis, Valois & Huebner, 2000; Strauss, 2004, 2008, Jennings, Higgins, Tewksbury, Gover & Piquero, 2010; Jenning, Park, Tomisch, Gover & Akers, 2011).

It should be emphasized that both of these findings represent new and different knowledge about the intimate partner violence phenomena in Kosovo. This assumption is based in few main arguments. First this is the first study conducted with student population, which represent distinctive sample in comparison to whole population and shows fairly high rates of perpetration of the three types of violence in dating relationships among university students, both male and female. Secondly, findings from this study show that most of violence was mutual and that male and female students are both perpetrators and victims. Finally, this is the only study that asked female students about perpetration of intimate partner violence, and consequently disclosed high rates of perpetration of dating violence

among females as well. This is a rather first-hand finding for this distinctive population and needs further elaboration, taking into account the complexity of intimate partner violence phenomena and contextual factors. However, taking into account the high mutuality rates it could be assumed that female violence happened in self-defense, as reaction to the partner violence, but further elaboration especially through qualitative methods of data collections should be used in order to understand our assumption. Nevertheless, it should be emphasized that Kosovo gone through many political, social and cultural changes and a lot of effort has been given to the empowerment of position of women in our society, especially in terms of rights of women and we could assume that these findings reflect the new reality.

This study has several limitations that are important to be considered. Starting with convenience sample of university students and the findings could not be generalized for the population. Moreover, this study did not take into account the motives of the violence and we could assume that violence was significantly different for male and female students. Finally, findings from this study show the need for prevention of dating violence among university students.

## Reference:

- Amar, A. L. & Gennaro, S. (2005). Dating violence in college women: associated physical injury, healthcare usage, and mental health symptoms. *Nursing Research*, 54, 235-242.
- Archer, J. (2002). Sex differences in physically aggressive acts between heterosexual partners: A Meta – analytic review. *Aggression and Violent Behavior*, 74 (4), 313-351.
- Barrick, K., Krebs, C. P., & Lindquist, C. H. (2013). Intimate partner violence victimization among undergraduate women at historically black colleges and universities (HBCU's). *Violence Against Women*, 19, 1014- 1033.
- Bryant, S. A., & Spencer, G. A. (2003). University students' attitudes about attributing blame in domestic violence. *Journal of Family Violence*, 18, 369-376.
- Baker, C. R. & Stith, S. M. (2008). Factors predicting dating violence perpetration among male and female college students. *Journal of Aggression, Maltreatment & Trauma*, 17 (2), 227- 244. Doi: 10.1080/10926770802344836.
- Caetano, R., Schafer, J., Field, C., & Nelson, S. M. (2002). Agreements on reports of intimate partner violence among White, Black and Hispanic couples in the United States. *Journal of Interpersonal Violence*, 17(12), 1308–1322.
- Center for Protection of Women and Children. (2004). *Analysis on Domestic Violence and Trafficking. Annual Report*. Prishtina: Centre for Protection of Women and Children.
- Chan, K. L, Brownridge, D. A., Tiwari, A., Fong, D. Y. T., Leung, W. C., & Ho, P. C. (2010). Associating pregnancy with partner violence against Chinese women. *Journal of Interpersonal Violence*, published online 21 May 2010. doi:[10.1177/0886260510369134](https://doi.org/10.1177/0886260510369134).
- Chan, K. (2011). Gender differences in self-reports of intimate partner violence:A review. *Aggression and Violent Behavior* 16, 167- 175. doi:[10.1016/j.avb.2011.02.008](https://doi.org/10.1016/j.avb.2011.02.008)

- Cercone, J. J., Beach, S. R. H., & Arias, I. (2005). Gender symmetry in dating intimate partner violence: Does similar behavior imply similar constructs? *Violence and Victims*, 20 (2), 2017-218.
- Coker, A. L., Davis, K. E., Arias, I., Desai, S., Sanderson, M., Brandt, H. M., et al. (2002). Physical and mental health effects of intimate partner violence for men and women. *American Journal of Preventive Medicine*, 23, 260–268.
- Dobash, R. P. & Dobash, R. E. (2004). Women's violence to men in intimate relationships: Working on a puzzle. *British Journal of Criminology*, 7 (1), 29-39.
- Edleson, J. L., & Brygger, M. P. (1986). Gender differences in reporting of battering incidences. *Family Relations*, 35(3), 377–382.
- Foo, L., & Margolin, G. (1995). A multivariate investigation of dating aggression. *Journal of Family Violence*, 10, 351-377.
- Harned, M. S. (2001). Abused women or abused men? An examination of the context and outcomes of dating violence. *Violence and victims*, 16 (3), 269-285.
- Jennings, W.G., Higgins, G. E., Tewksbury, R., Gover, A., & Piquero, A. R. (2010). A longitudinal assessment of the victim-offender overlap. *Journal of Interpersonal Violence*, 25, 2147-2174.
- Jennings, W. G., Park, M., Tomsich, E. A., Gover, A. R., & Akers, R. L. (2011). Assessing the overlap in dating violence perpetration and victimization among South Korean college students: The influence of social learning and self-control. *American Journal of Criminal Justice*, 36, 188–206.
- Kaukinen, C., Gover, A. R., & Hartman, J. (2012). College women's experiences of dating violence in casual and exclusive relationships both as victims and perpetrators. *American Journal of Criminal Justice*, 37, 146–162.
- Leisring, P. A. (2012). Physical and emotional abuse in romantic relationships: Motivation for perpetration among college women. *Journal of Interpersonal Violence*, 28, 1437. DOI: 10.1177/0886260512468236

- Langhinrichsen-Rohling, J., Selwyn, C., & Rohling, M. L. (2012). Rates of bidirectional versus unidirectional intimate partner violence across samples, sexual orientations, and race/ethnicities: A comprehensive review. *Partner Abuse*, 3(2), 199-230.
- Rivas, M. J., Graña Gómez, J. L., O'Leary, K. D., & Lozano, G. P. (2007). Physical and psychological aggression in dating relationships in Spanish university students. *Psicothema*, 19(1), 102–107.
- Shook, N. J., Gerrity, D. A., Jurich, J., & Segrist, A. E. (2000). Courtship violence among college students: A comparison of verbally and physically abusive couples. *Journal of Family Violence*, 15, 1-22.
- Statistical Agency of Kosovo (2011). Women and Men in Kosovo. SAK: Prishtina. Retrieved from: <http://ask.rks-gov.net/ENG/pop/publications>
- Stets, J. E., & Strauss, M. A. (1990). *Gender differences in reporting marital violence and its medical and psychological consequences*. In M. A. Strauss, & R. Gelles (Eds.), *Physical violence in American families*. London: Transaction.
- Strauss, M. A, Hamby, Sh. L., Boney-McCoy, S., and Sugarman, D. (1996). The revised Conflict Tactic Scale (CTS2): Development and preliminary psychometric data. *Journal of Family Issues*, 17, 283-316.
- Strausss, M.A. & Douglas, E. M. (2004). A short form of the Revised Conflict Tactics Scales, and typologies for severity and mutuality. *Violence Victims*, 19(5), 507-520.
- Strauss, M. A. (2004). Prevalence of violence against dating partners by male and female university students worldwide. *Violence Against Women*, 10, 790-811.
- Strauss, M. A., & Ramirez, I. L. (2007). Gender symmetry in prevalence, severity, and chronicity of physical aggression against dating partners by university students in Mexico and USA. *Aggressive Behavior*, 33, 281-290.
- Strauss, M. A. (2008). Dominance and symmetry in partner violence by male and female university students in 32 nations. *Children and Youth Services Review*, 30, 252–275.

- Szinovacz, M. E. (1983). Using couple data as a methodological tool: The case of marital violence. *Journal of Marriage & the Family*, 45(3), 633–644.
- Wareham , R. (2000). *No Safe Place: An Assessment on Violence Against Women*.
- United Nations Development Fund for Women (UNIFEM). Prishtina: United Nations Development Fund for Women (UNIFEM).
- UNICEF (2014). Assessment baseline study on different dimensions of domestic violence in three municipalities (Dragash, Gjilan and Gjakova). (in press).



**Measuring creativity:  
Comparison between gifted and regular pupils in  
Kosovo**

**Njomza LLULLAKU, PhD candidate  
Assistant, Department of Social Work, University of Pristina**

Pristina, September 2014

## Abstract

With a sample of 130 pupils between 14 and 17 years of age the present study compared two groups of pupils, 41 gifted pupils and 89 regular pupils from Kosovo. The study aimed to measure perception of pupils, parents and teachers regarding pupils' creativity, comparing it with their perception of pupil's intelligence and then with the actual creativity scores using Torrance Test of Creative Thinking (US norms). The underlying purpose of the study was to compare perceptions with standardized norms.

Overall, results showed that when judging creativity parents and teachers rate pupils' creativity higher than pupils do for themselves. However, it is interesting to note that pupils' self-evaluation of their intelligence is much higher than that of their creativity which might suggest that creativity may not be seen as such a '*desirable trait*' as intelligence. When the two groups are compared using TTCT, the average scores of creativity for the gifted pupils resulted in 13% higher scores for creativity than for the regular group. Overall the average scores of creativity for the presented sample of 130 pupils from Kosovo are lower than 50% when compared with US norms. This strongly contradicted parents and teachers' perception of pupil's creativity and moreover raised the question: why the results are overall so low?

---

### Acknowledgments

I would like to thank Dr. Klaus Schuch from Center for Social Innovation (ZSI) for the valuable input.

## 1. Introduction

Although there is widespread agreement that creativity signifies an important aspect of human behavior and is relevant to nearly every domain of activity (Runco, 2007; Sternberg, 2006; Banaji, Burn, Buckingham, 2010), its definition has been described as elusive due to the multidimensional nature of creativity and its need to encompass a broad range of disciplines (Abbott, 1997). As expanded on by Kampylis and Valtanen(2010) *in their study that analyzed* 42 explicit definitions of creativity and 120 collocations, they found that theorists and researchers can loosely summarize that definitions of creativity consist of the following intersecting principal components, which Rhodes (1961) coined as the 4P's consisting of: “*person* (individual/s), *process* (intentional activity), *press* (in specific context), and *product* (tangible or intangible)” (Kampylis&Valtanen, 2010, p.198). That said, a substantial number of researchers (Amabile 1996; Sternberg & Lubart, 1999) believe that creativity at its most basic involves a mixture of uniqueness and usefulness.

For the purpose of the study the Torrance (1966) definition of creativity was used “...a process of becoming sensitive to problems, deficiencies, gaps in knowledge, missing elements, disharmonies, and so on; identifying the difficult; searching for solutions, making guesses or formulating hypotheses about the deficiencies, testing and retesting these hypotheses and possibly modifying and retesting them, and finally communicating the results.” (p. 8).

According to Lubart (2004), traditional education has focused more on knowledge acquisition and the ability to think analytically; however, nowadays it seems clear that achievement should not be limited to factual knowledge for its own sake but should ensure skills that enable humanity to make use of that knowledge, with particular focus given to creative ways of using facts to gain an innovative and excellent outcome.

While today in affluent nations there is a history of the recognition and promotion of creativity and the importance it plays in 21<sup>st</sup> century education (NACCCE, 1999), in the case of Kosovo whilst still under UN administration in 2001 there is a brief mentioning of the necessity for creativity in schools throughout Kosovo, although it was not until 2011 that the ‘Curriculum Framework for pre-university education in the Republic of Kosovo<sup>210</sup>, was designed and a definition for creative thinking added as the desired outcome (MEST, 2011). The rational provided by the Framework’s lead author Luljeta Belegu-Demjaha was the belief that creative people create a creative and open-minded society. While this claim can only be seen as positive, without supporting data, an assessment of its implementation might become problematic.

This study aims to examine the level of creativity of pupils in Kosovo. It will compare gifted (IQ 145) and regular pupils (IQ not controlled) at two levels, firstly by measuring their perception of their creativity with the help of a self-assessment questionnaire and secondly by measuring their actual creativity with a standardized instrument (Torrance Test of Creative Thinking). In addition the data will be supplemented by additional information gathered from parents and teachers who were also asked to assess pupil’s creativity. The study compares whether or not there is a difference between the perceived creativity of pupils (disaggregated into gifted and regular pupils), parents and teachers and the actual pupils’ creativity (using U.S.A. norms).

While the concept of creativity is acknowledged by some as connected to intelligence, such as the belief that a reasonably high level of intelligence is required for greater creative achievement (Guilford, 1967; Vernon, 1967), others such as Preckel, Holling, and Wise (2006) have argued that the link between intelligence and creativity is weak and unsupported, in particular by the “threshold

---

<sup>210</sup>Curriculum framework for pre-university education in the Republic of Kosovo (2011).[http://www.ibe.unesco.org/curricula/kosovo/kv\\_alfw\\_2011\\_eng.pdf](http://www.ibe.unesco.org/curricula/kosovo/kv_alfw_2011_eng.pdf)

theory” (Guildford, 1967) which ascertains a moderate link of intelligence and creativity until an IQ of 120, which then disappears for those with an IQ over 120. Preckel et al., (2006) own study showed that for 12-16 year olds, the correlation between intelligence and creativity throughout an ability range is similar.

Giftedness as explained by Renzulli (1978, 1986) is more than just intelligence. In his theory, the three ring conception of talent development defines giftedness as the combination of creativity, task commitment and high intelligence.

TTCT, the Torrance Tests of Creative thinking has been re-normed four times since its development by Torrance in 1966. It is available in over 35 languages (Millar, 2002), now – due to this study - including Albanian. It is the most widely used creativity test throughout the world as well as the most referenced one (Kim, 2006). All these points combined with its consistency across age groups, cultures and its validity are the rationale for its use.

Regarding teachers, creativity researchers (e.g., Runco, 1990; Cheung, & Leung, 2013) believe that educators’ internal understanding of creativity plays a significant role in their interaction with students in regards to pupil performance, and as argued by Cropley, (1992) cited at Westby & Dawson (1995), educators often find pupils exhibiting creative traits as undesirable, which runs counter to their self-reported preference of enjoying the experience of engagement with creative pupils. Moreover Sommer, Fink, & Neubauer1 (2008) note that parents and teachers’ estimates are shown through correlation to be far more accurate at predicting high intelligence than creative ability. Furthermore, when it comes to creativity teachers are unable to separate the academic results of a student from their creative ability. Whereas parents are far more likely to be positively biased in regards to their children frequently resulting in an overestimation of creative abilities. Also Reiter-Palmon et al., (2012) conclude while self-perception has a role to play in the evaluation of creativity its significance is modest and should be reviewed with vigilance.

The topic of gender differences in creativity is a long term disputed and controversial subject; with predominant findings of no significant differences in innate creative ability between genders (Stoltzfus et al., 2011). As Bear and Kaufman (2008) have highlighted where there are gender differences they have a female bias, they go on to argue that external influences are the most likely contributor for any gender differences within creativity scores.

## **2. Method**

### **2.1 Participants**

A total of 130 pupils took part in the study. The sample consisted of 62 boys and 68 girls between 14 and 17 years old ( $M = 14.4$ ,  $SD = 1.30$ ). The group was divided in two groups: gifted pupils and regular pupils. In total, 41 gifted pupils (58% male;  $M = 15.7$  years,  $SD = 1.11$ ) were compared to 89 regular pupils (57% female;  $M = 13.8$  years,  $SD = .89$ ). Gifted<sup>211</sup> pupils were found through the gifted center in Pristina (ATOMI<sup>212</sup>, IQ 145+) which measured their IQ with Raven Progressive Matrices and with Raven's Advanced Progressive Matrices (APM). In addition, four primary public schools for regular pupils took part in the study (two schools from Pristina, one from Suharekë and one from Podujevë). Participants were randomly selected.

The procedure was as follows: in two schools in Podujevë and Suharekë, three classes of grade 9 were randomly selected from which 9 pupils from each class were randomly selected to take part (using their ID number, in one class even ID numbers in the other odd ID

---

<sup>211</sup>Gifted pupils: 9 participants from Prishtina, 7 from Mitrovica, 10 from Gjakova, 4 from Gjilan, 2 from Suhareke, 2 Klina, 1from Vushtrri, 1from Lipjan, 1from Kacanik, 1 from Balince, 1 from Besiane, 1from Decan, and 1from Ferizaj.

<sup>212</sup> The center for gifted - ATOMI, Prishtina/Kosovo <http://www.encompass-ks.com/atomi.htm>

numbers; with 27 pupils in each school [Podujevë and Suharekë], in total 54 pupils). In Pristina, one school allowed us to use only one class of grade 9 which was randomly selected. In this school 9 pupils were selected by their school ID number by taking pupils with even ID number in one class, additionally 5 students volunteered to take part in the study. In the other school in Pristina, two classes of grade 9 were allowed, which were selected randomly (in total 21 pupils).

Regarding teachers and parents' evaluation of pupils' creativity and intelligence we took as part of the sample only the 80 pupils (40 females and 40 male) that were evaluated by both teachers and parents, and therefore the response rate of teachers and parents is 61 % of the original sample. A total of 80 parents evaluated their pupils' creativity and intelligence and a total of 31 teachers evaluated 80 pupils [for the regular group 9 teachers' evaluated 50 pupils and for the gifted group 22 teachers evaluated 30 gifted pupils].

## 2.2 Instruments

Two items from the instrument *How would you describe yourself? Short Form* (Runco, 2013) were used for pupils' self –evaluation in this study (items: '*you think or act in a creative fashion*' and '*you are smart*'), with Cronbach's alpha  $\alpha=.97$ . Then the same items were adapted for parents and teachers (items: '*your child/pupil is creative*' and '*your child/pupil is smart*'), depicting Cronbach's alpha  $\alpha=.96$ . Participants could respond using a 6 scale rating for each item from 0 = never, 1 = rarely, 2= occasionally, 3 = sometimes, 4 = often, and 5 = always.

The participant's creativity was measured using the TTCT (Torrance, 1966). The validity of the Torrance Tests of Creative Thinking (TTCT) and also its consistency across different cultures and ages (Kim, 2006) were the reasons for choosing this instrument to assess creativity for the first time in Kosovo. TTCT has five norm referenced measures, also in the scoring thirteen criteria are added

referred as creative strength which are referenced measures (Torrance, 1990). The norms consist of five categories of fluency, originality, elaboration, abstractness of titles and resistance to closure. As well, in part of the evaluation score also the thirteen referenced measure criteria were included, such as: emotional expressiveness, storytelling articulateness, movement or action, expressiveness of titles, synthesis of incomplete figures, synthesis of lines or circles, unusual visualization, internal visualization, extending or breaking boundaries, humor, richness of imagery, colorfulness of imagery, and fantasy (Torrance, 1990; Torrance, Ball & Safer, 2008; Kim, 2011). The test booklets were scored using a streamlined scoring guide for Figural Form A using U.S.A. norms (Torrance, Ball and Safer, 2008).

Each instrument (test, instructions and questionnaires) was translated from English to<sup>213</sup> Albanian and then back into English. The translations were conducted by two independent translators who were in turn supervised by two psychologists. Piloting of the instruments was completed as recommended by cross-cultural research methodologists (Van de Vijver & Leung, 1997).

### **2.3 Procedure**

During the introduction phase, students were acquainted with the purpose of the study, asked to participate and then given parents' permission form. The same instructions were given at each school. The TTCT test, including instruction and self-evaluation, lasted 45 min. Each of the class groups were tested in separate classrooms. Participation was on a voluntary basis with the knowledge that all information would be kept confidential. The teacher questionnaires related to individual pupils were given at the same day the TTCT was conducted and collected two days later, while the parents questionnaire for pupil evaluation were handed over after granting the parents' permission.

---

<sup>213</sup>Translated for the first time into Albanian.

### **3. Results**

#### **3.1 Comparison of pupils', parents' and teachers' perception of pupils' creativity and intelligence**

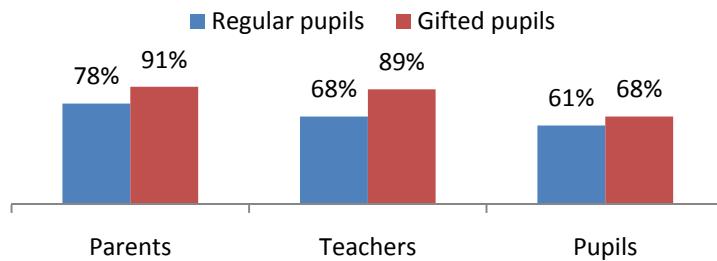
A total of 130 pupils self-evaluated their creativity ( $M = 3.79, SD = 1.03$ ) and their intelligence ( $M = 4.45, SD = .87$ ). With 41 gifted pupils and 89 regular pupils. However, when parents and teachers' perception of pupils' creativity and intelligence were compared, a total of 80 pupils were used in the analysis (50 pupils of the regular group and 30 pupils for the gifted group which were evaluated both by their parents and their teachers). A total of 80 parents evaluated their child's creativity ( $M = 4.24, SD = .81$ ) and intelligence ( $M = 4.81, SD = .39$ ) and teachers also evaluated 80 pupils for their creativity ( $M = 4.00, SD = 1.02$ ) and intelligence ( $M = 4.45, SD = .87$ ).

When comparing the perception of pupils' creativity (self-reported scale using the ratings 'always' and 'often') between gifted and regular groups by parents, teachers and pupils, the results show an interesting finding (see Figure 1). Overall pupils have the lowest self-evaluations of their own creativity, followed by teachers, with parents coming in with the highest score. It should be noted that there was a higher expectation by parents and teachers in regards to creativity for the gifted group showing a difference of + 21% for teachers and +13% for parents as opposed to the regular pupils. In terms of student self-perception, gifted pupils group have shown a 7% plus in perception of creativity over regular pupils.

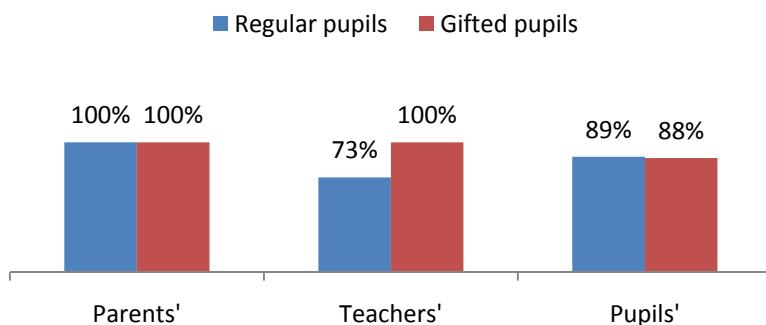
However, when referring to perception of pupils' intelligence, (see Figure 2), parents of both group (gifted and regular) scored the highest (with 100%). On the other hand pupils' self-evaluation for their intelligence is the lowest with no significant difference between groups (with 89% for regular pupils and 88% for gifted pupils). Teachers have evaluated the gifted group as 100% intelligent. However, when evaluating regular pupils, teachers had more variety of responses, resulting in an average of 73% for their perception of

regular pupils being intelligent; showing a possibility of accuracy of judgment or underestimation.

**Figure 1.** Comparison between gifted and regular pupils: perceptions of parents, teachers and pupils evaluation of pupils' creativity



**Figure 2.** Comparison between gifted and regular pupils: perceptions of parents, teachers and pupils evaluation of pupils' intelligence



Prior to in depth analysis an exploratory data analysis was conducted to determine if data were normally distributed. Results for the Kolmogorov-Smirnov test for normality (Field, 2007) indicated that all the scores distribution deviated significantly from a normal distribution. As results of positively skewed data, Spearman rank correlation coefficient nonparametric test was used (Table 1). When pupils', parents' and teachers' perception on pupils' creativity were correlated with their perception of pupils' intelligence, the result showed significant positive, however low, correlation between pupils'

self-evaluation of creativity with pupils' self-evaluation of their intelligence,  $r_s(130) = .27, p < .05$ . Parents' perception of creativity was positively, however moderately, correlated with parents' perception of pupils intelligence  $r_s(80) = .38, p < .001$ . On the other hand, teacher evaluation of pupils' creativity was positively and highly correlated with their evaluation of pupils intelligence  $r_s(80) = .70, p < .001$  and moderately with academic achievement  $r_s(80) = .33, p < .01$ .

**Table 1.** Correlation between pupils', parents' and teachers' perceptions of pupils' creativity and intelligence [Pupils: N (130); Parent: N (80); Teacher: N (30)]

Variables	1	2	3	4	5	6	7
<i>Perception of creativity</i>							
1. Pupils				.27*			
2. Parents					.38***		
3. Teachers						.70***	
<i>Perception of intelligence</i>							
4. Pupils							
5. Parents							
6. Teacher							.33**
7. Academic achievement							

\* $p < .05$ . \*\* $p < .01$ . \*\*\* $p < .001$

When the two groups ('gifted' and 'regular' students) were compared, a very interesting finding was that the self-evaluation of pupils creativity of the regular pupils group was moderately positive correlated with their self-evaluation of their intelligence  $r_s(89) = .32, p < .01$ . However, this is not the case with the gifted pupils, which showed no correlation at all between their evaluation of their creativity and their intelligence.

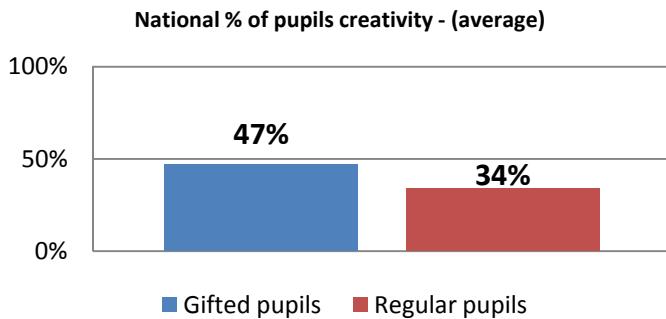
For two groups (gifted and regular), results from Chi-Square show that there is no significant difference between gender and pupils, parents and/or teachers judgment of pupils' creativity. As well, for the two groups no gender difference was found for the pupils, parents and teachers' evaluations regarding pupils' perceived intelligence.

### **3.2 Pupils creativity scores from Torrance Test of Creative Thinking**

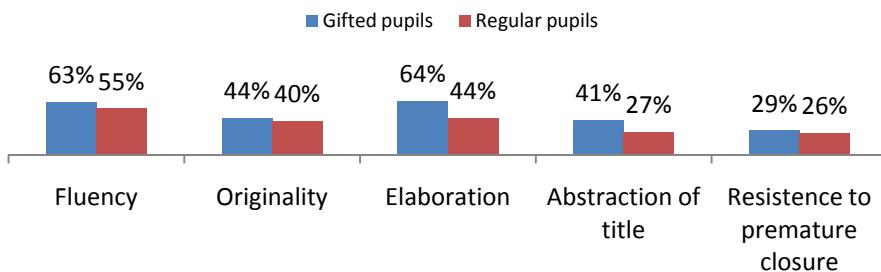
A total of 130 pupils took part in the TTCT test, 41 gifted pupils and 89 regular pupils. The creativity scores derived were based on the scoring manual of TTCT for each participant. A creativity index was calculated and then compared with average scores from the US norms. Figure 3 shows that when the two groups are compared, the gifted pupils scored 13% more in creativity than the regular pupils. To check for statistical significance, results for the Kolmogorov-Smirnov test for normality (Field, 2007) indicated that the scores distribution did deviate significantly from a normal distribution and were negatively skewed. For further analysis of the variables of our interest we used Mann-Whitney U test that evaluates whether the medians on a test variable differ significantly between groups. Mann Whitney U test resulted with a higher average rank of national percentage of overall pupils creativity for gifted pupils 5295.50 than regular pupils average rank 3219.50, showing a significant difference between the groups in favor of the gifted group with  $z=-2.67, p < .01$ .

However, it should be noted that in overall for age 14-17 for both groups from Kosovo the creative scores presented on average are lower than 50% when compared with US norms (Torrance, Ball and Safer, 2008).

**Figure 3.** Comparison of pupil's average creativity scores between gifted and regular pupils



**Figure 4.** Comparison between gifted and regular pupils in five categories of Torrance Test of Creativity (TTCT)



In addition, when referring to the five norm referenced measures: fluency, originality, elaboration, abstractness of titles and resistance to closure, we can see from Table 4 that in categories fluency, elaboration, and abstractness of titles the gifted group has higher average scores, with lowest scores found in the category of resistance to closure (gifted 29%, regular pupils 26%), where the two groups do not differ much. When it comes to originality<sup>214</sup> surprisingly both groups have a similar result (gifted 44%, regular pupils 40%), but

<sup>214</sup> ‘Originality: The number of statistically infrequent ideas; shows an ability to produce uncommon or unique responses’ (Kim, 2006, p.5).

lower than 50%, which raises concern given the importance of this category.

Mann Whitney U test resulted with higher average rank of national percentage of frequency scores, with an average rank for gifted pupils of 5399.50 and an average rank for regular pupils of 2985.50, showing also that this difference was significant  $z=-1.96$ ,  $p<.05$ . A significant difference was also found between the two groups in the category of national percentages of elaboration  $z=-3.69$ ,  $p<.001$ , with higher average rank of gifted pupil of 5066.00 than average rank of regular pupils of 2788.00. However, for the categories ‘originality’, ‘closure’ and ‘abstractness of titles’ no significant differences could be detected.

Also it is interesting to note that regarding gender and actual TTCT creative scores, the results show in the regular pupils group a ratio of 2:1 favoring girls when referring to highest scores (85%> in creative national percentage using TTCT). For the gifted pupils group no significant gender difference between high creativity scores could be identified. The results from Chi-Square show that there is a significant difference between gender and pupils creativity,  $X^2 = 85.38$ ,  $df= 55$ ,  $p< .01$ , meaning that Kosovar girls have performed better in overall creativity TTCT scores than boys.

#### 4. Discussion

With a sample of 130 pupils between 14 and 17 years old the presented study compared two groups of pupils, 41 gifted pupils and 89 regular pupils from Kosovo. The study aimed to measure perception of pupils, parents and teacher regarding pupils’ creativity, comparing with their perception of pupils intelligence and then with actual creativity scores by using the Torrance Test of Creative Thinking (US norms). The underlying purpose of the study was to compare perceptions with standardized norms.

Overall, results showed that parents and teachers rate pupils' creativity higher than pupils do for themselves , implying that pupils may hold higher standards when self-evaluating creativity. It's interesting to note that pupils self-evaluation of their intelligence is much higher than that of their creativity which might suggest that creativity may not be seen as such a '*desirable trait*' as intelligence or that stating you are less creative comes with less insulted ego than when referring to intelligence.

Overall, the average scores of creativity for the presented sample of 130 pupils (gifted pupils and regular pupils) ageing 14-17 from Kosovo are lower than 50% when compared with US norms. This strongly contradicted parents and teachers' perception of pupil's creativity and more so raises the question why the results are overall so low?

When the two groups are compared the average scores of the gifted pupils are 13% higher for creativity than for the regular group, and while the difference in scores might imply that a high IQ is connected to a greater ability in creativity there is an argument to make that this could also be the result of preferential treatment. The overall low average score for both groups seems to point in the direction of an institutional failure in terms of implementation and comprehension of creativity. However, it is a limitation of the study that the IQ of the regular pupils was not controlled.

Furthermore the closeness in both groups score on 'originality' and the significantly lower than average scores points to a cultural weakness in regards to one of the central pillars of creativity. As well when taking into consideration the differences in responses to the question posed on the perception of intelligence versus the perception of creativity, arguable there is less desire to be perceived as creative as opposed to be perceived as intelligent, indicating a negative bias of creativity. Kosovo with its lack of historic creative education presents the possibility that this negative bias is based around an inability to differentiate between the concept of the creative and artistic, an art

bias (Runco, 2007), which as such can be perceived as a predominantly feminine area of activity, with teachers actively supporting one gender over another (Dalton, 2001). The discrepancy between the two groups in regards to gender success in the top 25% percent may be the result of gifted pupils becoming somewhat gender neutral once defined as gifted, an extension of their capacities as opposed to their sex.

Although this study is restricted by the limitation of the sample size and representativeness, the study provides a baseline for further investigation into pupils' creativity in Kosovo and the role of education in nurturing their creativity. Further study is also recommended to understand the underlying reason of female higher score in creativity, particularly teacher and pupils' conceptualization and expectation of creativity and gender.

## Reference:

---

- Abbott, J. (1997). To be intelligent. *Educational Leadership*, 54(6), 6-10.
- Amabile, T. M. (1996). *Creativity in context*. Boulder, CO.: Westview Press.
- Banaji, S., Burn, A., Buckingham, D. (2010). *The Rhetorics of Creativity: A literature review*. 2nd ed. London: Creativity, Culture and Education.
- Cheung, R. H. P., & Leung, C. H. (2013). Preschool teachers' beliefs of creative pedagogy: Important for fostering creativity. *Creativity Research Journal*, 25(4), 397-407.
- Cropley, A.J. (1992). *More ways than one: Fostering creativity*. Norwood, NJ:Ablex.
- Dalton, P. (2001). *The gendering of art education: Modernism, identity, and critical feminism*. Buckingham [England: Open University.
- Guilford, J.P. (1967). *The nature of human intelligence*. New York: McGraw-Hill.
- Kampylis, P., & Valtanen, J. (2010). *Redefining Creativity—Analyzing Definitions, Collocations, and Consequences*. *The Journal of Creative Behavior*, 44(3), 191-214.
- Kim, K. H. (2006). Can we trust creativity tests? A review of the Torrance Tests of Creative Thinking (TTCT). *Creativity Research Journal*, 18(1), 3-14.
- Kim, K.H. (2011). The Creativity Crisis: The Decrease in Creative Thinking Scores on the Torrance Tests of Creative Thinking. *Creativity Research Journal*, 23(4), 285-295.

- Lubart, T. (2004). *Individual student differences and creativity for quality education*. Paper commissioned for the EFA Global Monitoring Report 2005, The Quality Imperative. Paris: UNESCO.
- Millar, G. W. (2002). *The Torrance kids at mid-life*. Westport, CT: Ablex.
- Ministry of Education Science & Technology (MEST) (2011). *Curriculum Framework for undergraduate education of the Republic of Kosovo*. Retrieved on 05 June 2014 from [http://www.masht-gov.net/advCms/documents/Korniza\\_e\\_kurrikules11.pdf](http://www.masht-gov.net/advCms/documents/Korniza_e_kurrikules11.pdf)
- NACCE (1999). *All our futures: creativity, culture and education*. London: DfEE.
- Plucker, J. A., Beghetto, R. A., & Dow, G. T. (2004). Why isn't creativity more important to educational psychologists? Potentials, pitfalls, and future directions in creativity research. *Educational Psychologist*, 39(2), 83-96.
- Reiter-Palmon , R. Robinson-Morral , E. J. Kaufman , J. C. Santo , J. B.(2012). *Evaluation of self-perceptions of creativity: Is it a useful criterion?* *Creativity Research Journal*, 24, 107-114.
- Renzulli, J. S. (1978). What makes giftedness? Reexamining a definition. *Phi Delta Kappan*, 60, 180-184.
- Renzulli, J. S. (1986). The three-ring conception of giftedness: A developmental model for creative productivity. In R. J. Sternberg, & J. Davidson (Eds.), *Conceptions of giftedness* (pp. 53–92). New York, NY: Cambridge University Press.
- Rhodes, M. (1961). *An analysis of creativity*. *Phi Delta Kappan*, 42(7), 305-310.
- Runco, M. A. (1990). Implicit theories and ideation creativity. In M. A. Runco& R. S. Albert (Eds.), *Theories of creativity* (pp. 234–252). London, England: Newbury.

- Runco, M. A. (2007). *Creativity-Theories and themes: research, development, and practice*. Amsterdam; Boston: Elsevier Academic Press.
- Runco, M.A. (2013). How would you describe yourself? Short form.*Part of the Runco Creativity Assessment Battery (rCAB)* ©.
- Sommer, U., Fink, A., & Neubauer1, A.C. (2008). Detection of high ability children by teachers and parents: Psychometric quality of new rating checklists for the assessment of intellectual, creative and social ability. *Psychology Science Quarterly*, 50(2), 89-205.
- Sternberg, R. J., & Lubart, T. I. (1995). *Defying the crowd: Cultivating creativity in a culture of conformity*. New York: Free Press.
- Sternberg, R.J. (2006). The Nature of Creativity. *Creativity Research Journal*, 18(1), 87-98.
- Stoltzfus, G., Nibbelink, L.B., Vredenburg, D., & Thyrum, E. (2011). Gender, Gender role, and creativity. *Social Behavior and personality*, 39(3), 425-432.
- Torrance, E. P. (1966). *Torrance test on creative thinking: Norms- Technical Manual Research Edition*. Princeton NJ: Personnel Press.
- Torrance, E. P. (1990). *The Torrance tests of creative thinking norms—technical manual figural (streamlined) forms A & B*. Bensenville, IL: Scholastic Testing Service, Inc.
- Torrance, E. P., Ball, O. E. & Safter, H. T. (2008). *Torrance tests of creative thinking: Streamlined scoring guide for figural forms A and B*. Bensenville: Scholastic Testing Service.
- Van de Vijver FJR, Leung K. (1997). *Methods and Data Analysis for Cross-Cultural Research*. London: Sage Publications.

- Vernon, P. E. (1989). The nature-nurture problem in creativity. In J. A. Glover, R. R. Ronning & C. R. Reynolds (Eds.), *Handbook of Creativity: perspectives on individual differences* (pp. 93-110). New York, NY: Plenum Press.
- Westby, E.L., & Dawson, V.L. (1995). Creativity: Asset or Burden in the classroom. *Creativity research Journal*, 8(1), 1-10.

# **Measuring the Effects of Trade Liberalisation in Kosovo**

**Florin PECI and Mario HOLZNER**

**Florin Peci, PhD  
Assistant Professor, Faculty of Business Administration,  
University of Peja**

Pristina, September 2014

## **Abstract**

Similar to other countries in the European periphery Kosovo lacks competitiveness; it has adopted the Euro as national currency and started an integration process with the EU. The next milestone in this process is the signing of an FTA with the EU. In this article we simulate a full trade liberalisation vis-à-vis the EU, using the Global Simulation Model. Our results suggest a slight output loss of almost all the industries in Kosovo due to a drop in prices. Moreover the government budget is expected to lose about 5% of its revenues due to the tariff cut. A shift towards more direct taxation and an improvement of the investment climate in Kosovo is recommended.

**JEL-Classification:** F15, F17, P33.

## **1. Introduction**

Kosovo has introduced a liberal trade regime as part of the regional trade liberalisation processes, particularly those initiated by the Stability Pact for South Eastern Europe (Bartlett, 2008). Although not an official member of the Stability Pact, Kosovo committed itself to respect the obligations deriving from the Memorandum of Understanding (MoU) on Trade and Transport Facilitation in Southeast Europe (SEE), signed by the countries of SEE in 2001 (Sadiku, 2003). Practically, the MoU provided (i) the elimination of tariffs on 90% of the volume of trade and 90% of the tariff lines, (ii) the elimination of non tariff barriers to trade for intra-regional trade and the strengthening of trade in services and (iii) the facilitation in trade (Damijan, de Sousa and Lamotte, 2006). The overall objective of the MoU was the implementation of the bilateral Free Trade Agreements (FTAs) among the countries of the region. According to the MoU, FTAs were mandatory to the signatory parties, apart from Kosovo in which case countries were merely advised to sign an FTA if they deemed this step as beneficial. Kosovo signed the first FTA with Albania and later with Macedonia, Bosnia and Herzegovina and Croatia. The entire negotiation process was concluded by extending the Central European Free Trade Agreement (CEFTA) to the West Balkan countries in 2006, thus, converting the bilateral agreements into one single FTA. Kosovo acquired full CEFTA membership.

Despite the fact that the ailing Kosovo economy is facing severe difficulties in coping with the consequences of trade liberalisation, in the long run there may be several positive aspects of this process. Since one of the purposes of CEFTA is the establishment of trade rules based on European Union (EU) and World Trade Organization (WTO) principles, it is expected that the experience gained in trade with the countries in the region will make Kosovo's businesses competitive for the EU and World markets. In addition and in order to comply with the CEFTA rules and regulations Kosovo will establish and build up institutional and policy frameworks to comply with the requirements of the WTO.

However, the experience of Kosovo with CEFTA so far has not been very positive due to economic but also political barriers restraining Kosovo. At first, CEFTA was signed by the United Nations Interim Administration Mission in Kosovo (UNMIK) on behalf of Kosovo. Kosovo's international representation for almost a decade was the reserved right of UNMIK, and the negotiating process for bilateral FTAs and the CEFTA were conducted by UNMIK representatives. Thus, the question of legitimacy and Kosovo institutions' compliance with this process has been raised. Also, Serbia and Bosnia and Herzegovina continue not to recognize the institutions of the Republic of Kosovo. This has resulted in regular holdups of Kosovo's exports to these countries.

As regards the EU market, trade relations of Kosovo with the Union are specified under the Council Regulation 2007/2000 from September 2000. This Regulation recognizes Kosovo as an autonomous customs unit, whereby 95% of Kosovo's products are exempt from customs tariffs. Customs and quantity limitations remain into force only for a limited number of products (veal, sardines, wine and some textile products). Also, Kosovo is part of the Stabilisation Association Process (SAP) with the final aim of signing a Stabilisation and Association Agreements (SAA). However, as a small number of countries within the EU have not yet recognized the independence of Kosovo, the so called Stabilisation Tracking Mechanism (STM) remains in force instead of the SAP, designed to guide Kosovo towards necessary reforms for membership in the EU. This mechanism should be used for an easier access to the regional and EU market, since the EU through the SAP (STM in the case of Kosovo) is committed to further trade liberalisation with the countries of the region and between the countries of the region. Relations with the EU are essential for the development of Kosovo's economy, having in mind the fact that the EU is the market with the biggest potential, not only for Kosovo but the entire region, and the main source of investment. However, it is questionable if the economy of Kosovo is prepared for a market competition that the EU policies ask for. In recent years about 40% of Kosovo goods imports from the EU were

tariff-protected. A full trade liberalisation would be quite a burden for state finances as for instance in 2010 about 43% of Kosovo government revenues were collected at the border, with a large chunk of it being border excise, customs import duties and various other customs taxes (SAK 2011).

The EU's Autonomous Trade Measures (ATMs) apply to all Western Balkan countries and allow duty free access to the EU market for nearly all products originating from the region. These trade preferences were already granted to Kosovo in the past, but expired on 31 December 2010. The ATMs again re-entered into force on 30 December 2011. Now, important additional integration steps lie ahead: a dialogue on visa liberalisation, the negotiation of an FTA, participation of Kosovo in EU programmes and possibly European Bank for Reconstruction and Development (EBRD) membership. The possible effects of an FTA as a cornerstone of a future SAA are at the focus of our simulation analysis.

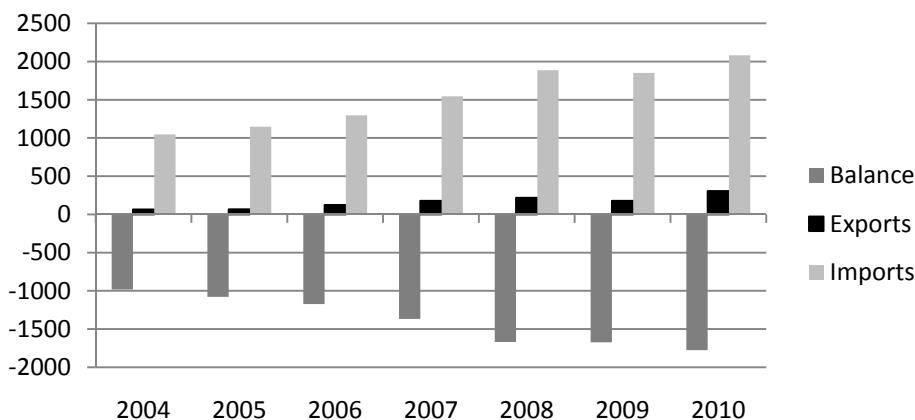
To our knowledge this is the first attempt to quantitatively estimate possible effects of trade liberalisation in Kosovo. Literature on this topic related to Kosovo is scarce. There exist the usual trade policy reports commissioned by international organizations and the government (see e.g. RIINVEST, 2003; RK, 2009). There are also a few articles available that deal with Kosovo trade issues in general (see Badivuku-Pantina and Gjonbalaj, 2010; Mustafa-Topxhiu and Xhelili-Krasniqi, 2011). However, all the existing literature remains purely descriptive. Moreover, the present exercise can also be seen as case study for similar developing economies that have a lack of competitiveness, adopt foreign currencies (Kosovo unilaterally adopted the Euro as its currency in 2002) and liberalise trade.

In the following we will give a brief description of the structure of Kosovo's foreign trade, present the applied simulation model, the data used and the results. Finally, the conclusions will provide some policy recommendations.

## 2. Kosovo Trade Structure

The collapse of the socially owned sector during the 1990s, due to the political crisis in former Yugoslavia, as well as the later delay in ownership transformation of socially owned enterprises (SOE), resulted in a dramatic fall of exports. Currently, Kosovo trade is dominated by imports. However, according to Central Bank of Kosovo (CBK) balance of payments data, 2010 was characterized by positive economic developments. Goods' export rose by 72% and imports by 12%. Still, the trade in goods deficit continued to increase by about 6%. Based on current investment and consumption trends a further increase of the trade deficit is expected for 2011. Imports of goods amounted in 2010 to more than Euro 2 bn. Goods export in 2010 was only at a mere Euro 300 mn. This amounts to a trade deficit of about Euro 1.7 bn or some 40% of GDP in 2010. The value is pretty persistent over recent years and rising (see Figure 1).

**Figure 1:** Trade Balance of Goods, in Euro mn



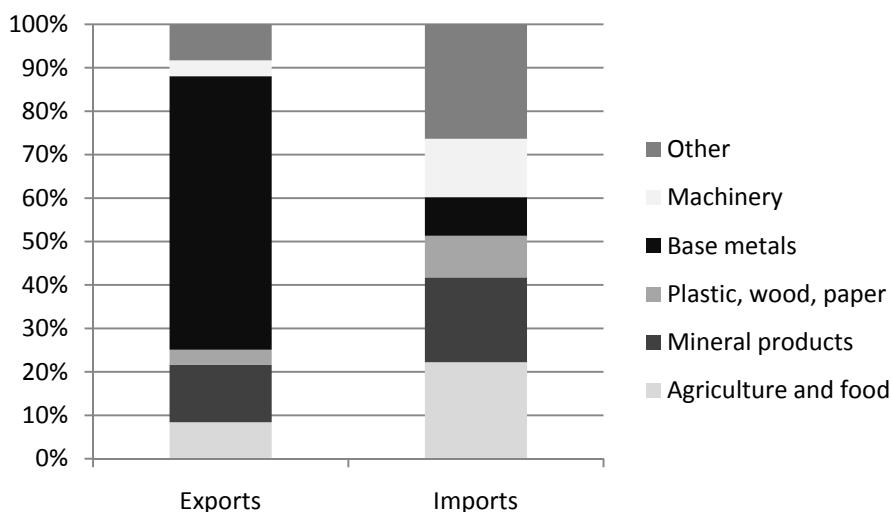
*Source: CBK.*

In 2010, the structure of exports (see Figure 2) was dominated by base metals. According to statistical data published by CBK, goods

export had the following structure: Base metals with a share of about 63%, followed by Mineral products with some 13%, Agricultural and food products with 8%, Machinery and electrical equipment with 4% and Plastic, wood and paper products with about 3.5%.

The import structure is more evenly distributed and consisted in 2010 of the following main items: Agricultural and food products was the largest group with some 22%, Mineral products had a share of 19.5%, followed by Machinery and electrical equipment with 13%, Plastic, wood and paper products with almost 10% and Base metals with about 9%.

**Figure 2:** Structure of exports and imports by economic category 2010, in % of total



*Source: CBK, 2010.*

According to CBK data, the structure of Kosovo's trading partners in 2010 remained similar to the previous years. In 2010, Kosovo realised around 75% of total trade with the EU and with CEFTA member countries. The noncompliance with the CEFTA

agreement by Serbia and Bosnia and Herzegovina poses a continuous obstacle to Kosovo's exports to these countries, and this situation continued also in 2010. Kosovo's exports towards the EU reached Euro 131 million in 2010. The share of Kosovo's exports to the EU in percent of total exports was at 45%. Italy remains the main destination for Kosovo's exports, with a share of 27% of total exports. The largest part of exports to Italy consists of nickel minerals. Other important EU destination countries for Kosovo's exports are Germany (5%) and Belgium (4%).

Also the allocation of Kosovo's exports among CEFTA member countries in 2010 remained similar to the previous year. The CEFTA share in exports amounts to 24%. In this group the largest export markets are Albania (11%) and Macedonia (9%). The EU and CEFTA countries represent the main trading partners for Kosovo also in terms of imports. Around 38% of total goods imported by Kosovo came from the EU member states. The largest part of imports comes from Germany (13%), Greece and Italy (both with a share of about 5%). Among the CEFTA countries (37%), most of the imported goods come from Macedonia and Serbia, with a share of 15% and 12% in total imports, respectively.

### **3. The Model**

The model that will be applied in this study is the Global Simulation Model (GSIM) for the analysis of global, regional and unilateral trade policy changes proposed by Francois and Hall (2003). This model has been used in a number of trade analysis papers, especially in cases where data is scarce (see e.g. Vanzetti, de Cordoba and Chau, 2005; Mutambatsere, 2006; Serletis and Fetzer, 2008; Hess and Cramon-Taubadel, 2008; Leudjou, 2012).

To avoid unmanageable complexity in the model, the solution set of the model is reduced to those global prices that clear global markets. Having a global set of equilibrium prices allows to back-solve for national results. The representation of import demand is log-

linearised and combined with generic export-supply equations (Francois and Hall, 1997).

One of the basic assumptions of the model is national product differentiation, as imports are imperfect substitutes for each other. Across products from different sources the elasticity of substitution is held to be equal and constant. Also the elasticity of demand in aggregate is held constant. Similarly import supply elasticity is constant too. This approach is consistent with the Armington (1969) approach to product differentiation at the national level.

The core equation for the global market clearing condition for each export variety is the following:

$$\begin{aligned} \hat{M}_{i,r} = \hat{X}_{i,r} \Rightarrow \\ E_{X(i,r)} \hat{P}_{i,r}^* = \sum_v N_{(i,v),(r,r)} \hat{P}_{(i,v),r} + \sum_v \sum_{s \neq r} N_{(i,v),(r,s)} \hat{P}_{(i,v),s} = \sum_v N_{(i,v),(r,r)} [P_r^* + \hat{T}_{(i,v),r}] \\ + \sum_v \sum_{s \neq r} N_{(i,v),(r,s)} [\hat{P}_s^* + \hat{T}_{(i,v),s}], \end{aligned}$$

where  $\hat{\cdot}$  denotes a proportional change,  $r$  and  $s$  the exporting regions,  $v$  the importing regions and  $i$  the industry designation.  $M$  and  $X$  represent imports and exports in quantities, respectively.  $E_{X(i,r)}$  is the elasticity of export supply and  $P_{i,r}^*$  the world price for exports from the region  $r$ .  $N_{(i,v),(r,r)}$  is the own price demand elasticity,  $P_{(i,v),r}$  is the internal price for goods from region  $r$  imported into region  $v$  and  $N_{(i,v),(r,s)}$  is the cross-price elasticity. Finally,  $T_{(i,v),r}$  is the power of the tariff,  $T=(1+t)$ . For any set of  $R$  trading countries this equation can be used to define  $S \leq R$  global market clearing conditions with  $R$  exporters. If also domestic production is modelled, there are exactly  $R=S$  market clearing conditions. A more detailed description and definition of the relevant own- and cross-price elasticities, global supply and demand definitions can be found in Francois and Hall (2003).

Using a fully-fledged general equilibrium model (which would have to include a full endogenisation of income and expenditure levels

across the region) is not possible because Kosovo lacks the necessary input-output tables. However, the partial equilibrium approach implies useful advantages because it allows for a rapid and transparent analysis of a wide range of commercial policy issues with a minimum of data and computational requirements.

Having the limitations of the partial equilibrium approach in mind, useful insights can be drawn with regard to complex, multi-country trade policy changes at the industry level. The results of the GSIM allow for the assessment of importer and exporter effects related to tariff revenues, exporter (producer) surplus, and importer (consumer) surplus.

The model requires the input of a bilateral trade matrix at world prices, an initial matrix of bilateral import tariffs in ad valorem form, a final matrix of bilateral import tariffs in ad valorem form, export supply elasticities, aggregate import demand elasticities and elasticities of substitution. Using additional data, domestic production effects can also be fitted into framework.

#### 4. The Data

The data necessary to run the GSIM model are detailed tariff (as well as data on subsidies if existing) and trade data (including data for trade with self, i.e. production less exports) as well as estimates of demand, supply and substitution elasticities. Data on trade as well as simple average applied tariff rates were taken from Kosovo Customs as well as from the UN Comtrade (Commodity Trade Statistics) and the UNCTAD Trains (Trade Analysis and Information System) database. Data was aggregated at the 2-digit ISIC Rev.3.1 (International Standard Industrial Classification of All Economic Activities) level and stems in general from the year 2010.

However, with regard to trade with self (gross output less exports) latest available disaggregated data were taken from the Statistical Agency of Kosovo for the year 2009 and extended with the help of more aggregated 2010 data, keeping the 2009 structure. For the EU

trade with self, data stems from Eurostat and represents latest reasonably complete data for all member countries for the pre-crisis year 2007. This should be a good proxy for the year 2010. For similar reasons trade with self data for the rest of the world reflects the year 2007 as well. Here, for manufacturing industries UNIDO data was used. For agriculture and mining sectors more aggregated UNSTATS National Accounts Main Aggregates Database value added data was de-aggregated using export shares of single industries.

Non-tariff-barriers (NTB) such as quotas were not included. This is especially a problem in the case of the EU data on protection from imports from Kosovo and the rest of the world. In 2000, the EU granted Autonomous Trade Measures (ATMs) to the Western Balkan countries, liberalising 95% of their exports to the EU. The remaining barriers are tariff quotas on imports of wine, baby beef and certain fishery products and some NTB's in the textile industry. For many products licensing is required. For the purpose of this paper, EU tariff against Kosovo was assumed to be zero for all industries.

The export supply elasticity (1.5), aggregate import demand elasticity (-1.25) and the elasticity of substitution (5) were adopted from Francois and Hall (2003). However, in the case of the EU and the rest of world (ROW) an “infinite” export supply elasticity (9999999) was assumed. This flattens out the supply curves and is in line with a small versus large country assumption.

These are certainly very simplified assumptions. However, due to the scarce data it would be impossible to estimate “true elasticities”. An alternative approach would be to employ average elasticities as e.g. described in 22 industry studies by Patrick Messerlin (2001). There, especially the elasticities of substitution seem to be in general much lower than 5. However, in the literature an elasticity of substitution of 5 is used quite often (see also Fujita, Krugman and Venables 2000).

## 5. The Results

After feeding the model step by step with the initial bilateral trade matrix (including trade with self), at world prices in Euro, the initial matrix of bilateral import tariffs in ad valorem form, the final matrix of bilateral import tariffs in ad valorem and the elasticities, the following output was estimated: trade effects, welfare effects (producer surplus, consumer surplus and change in tariff revenue) and price and output changes. This task was done for the 27 Kosovo industries at the ISIC 2-digit level which recorded non-zero imports from the EU in 2010.

A Stabilisation and Association Agreement scenario was chosen. Thus, a full liberalisation of trade between Kosovo and the EU was assumed. Given that Kosovo exports to the EU are already free of tariff due to the EU's ATMs, the sole difference between the initial matrix and the final matrix of bilateral import tariffs in our model is a zero tariff rate for Kosovo imports from the EU in the final matrix.

According to the model assumptions it is not very surprising that the overall simulated net welfare effect of liberalisation is negative for Kosovo (Euro -3.5 million), notably due to strong losses in tariff revenues (Euro -71.2 mn) and less so producer surplus which cannot be fully outweighed by a substantial consumer surplus in the wake of falling prices after liberalisation.

All the results of this exercise have to be seen with caution, because they are generated with the help of a partial equilibrium model instead of a general equilibrium model. Better performances of the general equilibrium model if the respective data were available might have helped us to find a shift from import competing and protected sectors to export sectors and non tradable sectors with potentially significant output increases in some of them. This is not possible to be observed in a partial equilibrium model.

Here we want to focus on the simulated effects of a Kosovo membership to the EU SAA on output and tariff revenues. Table 1 presents the most important results in this respect. The first column

shows the average Kosovo tariff rate for imports from the EU in 2010 per ISIC 2-digit sector that is being cut to zero in our simulation. Hence the following columns show some of the major simulation results (i.e. changes in consumer prices, output and tariff revenues).

**Table 1:** Simulation effects of Kosovo SAA accession

	Average tariff for imports from EU 2010	Simulated change in consumer prices	Simulated output change	Simulated output change	Simulated tariff revenue change
ISIC Rev.3.1	in %	in %	in %	in 1000 EUR	in 1000 EUR
01 - Agriculture	9.1	-0.38	-0.32	- 3,793	- 2,283
02 - Forestry	9.8	-0.12	-0.10	- 13	- 8
05 - Fishing	10.0	-0.20	-0.18	- 7	- 4
10 - Mining of coal	0.4	0.00	0.00	- 2	- 1
14 - Other mining	10.0	-0.64	-0.52	- 27	- 60
15 - Food and beverages	9.4	-2.37	-1.71	- 2,832	- 10,514
16 - Tobacco	9.7	-6.91	-5.98	- 13	- 3,221
17 - Textiles	9.8	-0.91	-0.62	- 234	- 495
18 - Wearing apparel	9.9	-0.85	-0.69	- 36	- 445
19 - Leather and footwear	9.9	-0.70	-0.60	- 2	- 263
20 - Wood products except furniture	9.8	-2.16	-1.75	- 239	- 685
21 - Paper and paper products	6.2	-0.96	-0.83	- 1,245	- 1,001
22 - Publishing and printing	8.3	-0.56	-0.48	- 333	- 196
23 - Coke and refined petroleum	7.2	-1.82	-1.58	- 18	- 5,420

24 - Chemicals	8.3	-3.96	-3.33	- 722	- 7,644
25 - Rubber and plastics	9.7	-3.20	-2.38	- 1,259	- 3,882
26 - Non-metallic mineral products	9.7	-1.25	-1.08	- 3,187	- 3,306
27 - Basic metals	9.2	-0.84	0.00	0	- 1,098
28 - Fabricated metal products	9.7	-3.58	-1.88	- 137	- 3,069
29 - Machinery	7.2	-4.23	-3.31	- 113	- 8,598
30 - Computing machinery	9.2	-3.99	-3.44	- 33	- 956
31 - Electrical machinery	9.6	-4.03	-3.46	- 592	- 3,647
32 - Communication equipment	9.8	-1.22	-1.05	- 63	- 96
33 - Precision instruments	4.8	-2.72	-2.09	- 3	- 817
34 - Motor vehicles	9.4	-7.54	0.00	0	- 11,320
35 - Other transport equipment	9.4	-0.57	-0.49	- 116	- 102
36 - Furniture	9.8	-2.97	-1.91	- 94	- 2,114
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-0.66</b>	<b>- 15,112</b>	<b>- 71,246</b>
Source: Own calculations.					

Current average applied tariff protection against EU imports is close to the maximum Kosovo tariff rate of 10% for almost all of the industries. Only for a few sectors that are mostly offering intermediate products and capital goods such as mining of coal, precision instruments, paper, machinery and refined petroleum tariff rates are somewhat lower on average.

Given the mostly uniform average tariff rate for imports from the EU of close to 9%, the largest price effects after a simulated liberalisation of trade with the EU occur in sectors where local production is rather small compared to imports. Industries with a drop of consumer prices above 4% after liberalisation include motor vehicles, tobacco, machinery and electrical machinery. Prices change very little in industries where domestic output is very strong compared to imports (e.g. mining of coal, forestry, fishing and agriculture).

Simulated relative drop in Kosovo output is highest in those industries where consumer prices decreased most and/or where the biggest part of local production is being sold domestically. Sectors with an estimated drop of more than 3% in output are the tobacco, the electrical machinery, computing machinery, chemicals and machinery industries. The motor vehicles and basic metals industries are not expected to lose any output as they do not sell their goods on the domestic market. On aggregate the 27 analyzed sectors are expected to lose some 0.66% in output due to trade liberalisation with the EU.

In terms of levels, almost two thirds out of the estimated total of 15 million euro output loss occurs in three industries only. These are the agriculture, the non-metallic mineral products and the food and beverages sectors. Sectors that do not necessarily lose a lot in relative terms but that are among the largest industries selling on the local market.

Regarding expected losses of tariff revenue, more than half of the estimated total losses of Euro 71 million are to be found in the following four sectors that register large imports from the EU: motor vehicles, food and beverages, machinery and chemicals.

Overall it can be said that a Kosovo completion of an EU SAA with a subsequent total opening of the Kosovo market to EU imports would have only minor effects in terms of lower prices for Kosovo consumers and less output for Kosovo producers that would face more competition. Lost tariff revenues would be more substantial. However estimated losses would make up less than 5% of the 2010 general government revenues.

## 6. Conclusions

The EU has granted Autonomous Trade Measures to all Western Balkan countries, allowing exporters from Kosovo a duty free access to the EU market. However, the ailing economy of Kosovo has hardly anything to export apart from base metals. Goods imports are seven times larger than goods exports. On its way of European integration, Kosovo has to negotiate a Free Trade Agreement with the EU. This research tries to simulate duty free entry of EU goods to the Kosovo market in the framework of a potential Stabilisation and Association Agreement.

The industry specific results of the partial equilibrium Global Simulation Model suggest that the simulated relative drop in Kosovo output is highest in those industries where consumer prices decrease most after liberalisation and/or where the biggest part of local production is being sold domestically. Sectors with an estimated drop of more than 3% in output are the tobacco, the electrical machinery, computing machinery, chemicals and machinery industries. However, on aggregate the 27 analyzed sectors are expected to lose only some 0.66% in output due to trade liberalisation with the EU. Lost tariff revenues would be somewhat more substantial. Still, estimated losses would make up less than 5% of the 2010 general government revenues.

Though the largest estimated output losses are relatively small and expected to occur in rather tiny sectors (the combined output of the machinery, computing machinery, electrical machinery and chemicals industries makes only some Euro 40 million), it is still a further blow for these medium to high skill sectors. It can be expected that increasing trade liberalisation between Kosovo and the EU will not increase the diversity of Kosovo exports, at least in the short run. The low skill, basic metals sector will remain the dominating export sector in Kosovo for at least the time when international commodity prices remain high.

However, in practical terms the expected loss in tariff revenues appears to be more policy relevant in the medium run. Kosovo government will have to consider well before the signing of a Free Trade Agreement how to compensate revenue losses. A move from revenues generated at the borders to more direct taxation seems to be essential. About 11% of government revenues stem from current taxes on income and wealth, which is only a third of the average share in the European Union in 2010. This will be also important in view of further falling international donor assistance, which made almost 20% of total government revenues in 2010.

In the longer run, increasing trade liberalisation and decreasing donor transfers and remittances will make it difficult for Kosovo to sustain trade deficits of up to 40% of GDP. An improved investment climate and better institutional and physical infrastructure (Keklik and Gashi, 2009) could help to attract foreign and domestic investors in order to establish a functioning tradable sector, which is capable to cover the country's imports through exports. In this context and given the experiences of similar economies that have adopted the Euro as currency but have a low level of competitiveness it might be also useful to consider the abandoning of the Euro and the introduction of an own flexible national currency. This would allow for an improvement of competitiveness and a more balanced current account, a cautious interest rate level in boom phases and a smoother absorption of shocks in crisis periods.

## Reference:

- Armington, P. (1969). “A Theory of Demand for Products Distinguished by Place of Production” *IMF Staff Papers* 16: 159-177.
- Badivuku-Pantina, M. and M. Gjonbalaj (2010). “Trade Exchange of Kosovo with Balkan’s Region Countries”, *Scientific Annals of the “Alexandru Ioan Cuza” University of Iasi*, Special Issue.
- Bartlett, W. (2008). “Regional integration and free-trade agreements in the Balkans: opportunities, obstacles and policy issues”, *Economic Change and Restructuring* 42: 25–46.
- Damijan, J.P., J. de Sousa and O. Lamotte (2006). “The Effect of Trade Liberalisation in South-Eastern European Countries”, The wiiw Balkan Observatory Working Papers, 70.
- Francois, J.F. and K. Hall (1997). “Partial Equilibrium Modelling” in J.F. Francois and K. Reinert, eds., *Applied Methods for Trade Policy Analysis: A Handbook*, Cambridge University Press: Cambridge.
- Francois, J.F. and K. Hall (2003). “Global Simulation Analysis of Industry-Level Trade Policy” technical paper, World Bank.
- Fujita, M., P. Krugman and A.J. Venables (2001). “The Spatial economy: Cities, Regions and International Trade” Cambridge: MIT Press.
- Hess, S. and S. von Cramon-Taubadel (2008). “Agricultural Trade Policy Modelling: Insights from a Metanalysis of Doha Development Agenda Outcomes” *CATPRN Commissioned Paper*, No. CP 2008-02.
- Keklik, M. and P. Gashi (2009). Capacity and Needs Assessment for Kosovo’s Trade Related Institutions, study commissioned by UNDP Kosovo.
- Leudjou, R.R. (2012). “The Doha Round and Food Security in the Dairy Sector in Cameroon: A Global Simulation Model (GSIM) Approach” *The Estey Centre Journal of International Law and Trade Policy* 13, 1: 115-130.
- Messerlin, P. (2001). *Measuring the Cost of Protection in Europe*. Institute for International Economics. Washington DC.

- Mustafa-Topxhiu, R. and F. Xhelili-Krasniqi (2011). Foreign Trade and Economic Growth in Kosovo: Trends and some Features. *International Journal of Economics and Management Sciences* 1, 5: 97-107.
- Mutambatsere, E. (2006). Trade Policy Reforms in the Cereals Sector of the SADC Region: Implications on Food Security. *Cornell University Department of Applied Economics and Management Working Paper*, No. 2006-17.
- RIINVEST (2003). Trade Policies and Export Promotion in Kosova” study commissioned by USAID.
- RK (2009). Trade Policy of Kosovo. Republic of Kosovo, Ministry of Trade and Industry.
- Sadiku, M. (2003). „Trade Liberalisation, Foreign Trade and Integrated Export Policy in Kosova” Albanian Center for International Trade, mimeo.
- SAK (2011). „Kosovo Government Accounts (2004 – 2010)” Statistical Agency of Kosovo, Series 3: Economic Statistics.
- Serletis, G.S. and J.J. Fetzer (2008). Modelling the Impact of the U.S. Tobacco Quota Buyout. *USITC Office of Economics Working Paper*, No. 2008-06-A.
- Vanzetti, D., S.F. de Córdoba and V. Chau (2005). Banana Split: How EU Policies Divide Global Producers, *UNCTAD Policy Issues in International Trade and Commodities, Study Series*, No. 31.



# **The Role of Creative Industries on Export and Employment in Small and Medium Enterprises**

## **- The Case of Kosovo**

**Besart L. HAJRIZI, MSc**  
**Business Support Centre Kosovo**

Pristina, September 2014

## **Abstract**

The study examines the influence of creative industries on exporting and employment as two of the most significant factors that impact the economic development, which are weaknesses of Kosovo as a transitional country and which should be exchanged into opportunities. Regression analysis is conducted to determine the most significant factors that affect export and employment for the full sample of firms. Creative industries include manufacturing, commercial and service companies. In this study were identified the most significant obstacles of creative industries and final results are presented in average where 1- is not an obstacle and 5- is the major obstacle – the higher the score the more obstacles is posing for creative industries.

Through this paper we will investigate how independent variables: creative manufacture industries, creative commercial industries and creative service industries influence export and employment rate at small and medium enterprises.

## Introduction

Creative industries make a contribution to the national economy. The use of the words creative industry is widespread yet the act of defining creative industries is still a matter for considerable disagreement in academic and policy - making circles.

The adoption of the creative industries concept was very much associated with the election of the new labour government in 1997 and the creation of the department for Culture, Media and sport (DCMS), now department for Culture, Olympics, Media and sport (DCOMS), which built upon the functions of the earlier department of national heritage. One of the new UK department's first acts was to set up the Creative Industries Task Force, which was responsible for the landmark Creative industries Mapping document in 1998 and a follow-up report in 2001 (British Council, 2010). This document defined creative industries as '*activities which have their origin in individual creativity, skill and talent and which have the potential for wealth and job creation through generation and exploitation of intellectual property.*' (DCMS, 2001).

The United National Conference on Trade and Development (UNCTAD) now recognizes the sector as "the cycles of creation, production, and distribution of goods," noting that they focus on but are not limited to the arts and potentially generate significant income from trade and intellectual property rights. It regards them as "a new dynamic sector in world trade" (UNCTAD, 2006).

While creative industries are often micro businesses or small to medium sized enterprises that focus on local markets, they can develop into powerful economic clusters, helping to drive economic growth and development by exporting their intellectual property outside their own regions, either nationally or internationally. There are many examples such as 3CIS which provides highly specialized services to major telecommunication carriers across the globe and other top ten micro and small creative SMEs for 2013, such as *Tatamata*, a multimedia company; *Koperativa*, a creative communications agency specialized in advertising, marketing,

branding & design, film & TV production; *PR Solutions*, a media and communications company; *Kanun*, a marketing communications agency; *Karrota*, a creative advertisement agency; *Entermedia*, an artistic producing music videos in Kosovo; INIT, a communication agency; *Zero Positive Publicis*, an advertising and marketing firm; *Paper Communications*, a local creative marketing agency; *Trokit Agency Creative*, a full-service strategic design and branding firm that specializes in delivering a cohesive message and a memorable brand for its clients and other similar organizations.

If policymakers are to identify the mechanisms by which creative activities, rather than “regular” industries, support innovation, and if they are to consider policies to encourage these activities, they need robust methodologies to map the creative economy. The most recent research in this area conducted by Nesta (Higgs et al, 2008), the UK government’s agency charged with fostering innovation, has shown the necessity to include in any analysis and policy development the impact of those in specialist creative occupations that are employed outside of the specialist creative businesses. This embedded employment accounts for 50% of the employment of creative occupations in the UK (CIIC, 2013).

Creative industries show more resilience to the impact of the global economic crisis than the traditional manufacturing industries as (UNDP, 2010).

So, the final aim of this paper is to investigate the role of creative industries at employment and export.

## Literature review

*Creativity* - refers to the formulation of new ideas and to the application of these ideas to produce original works of art and cultural products, functional creations, scientific inventions and technological innovations. There is thus an economic aspect to creativity, observable in the way it contributes to entrepreneurship, fosters innovation, enhances productivity and promotes economic growths which are the

key factors for a transitional economy. However, the twenty-first century has seen a growing understanding of the interface between creativity, culture and economics, the rationale behind the emerging concept of the “creative economy” (UNDP, 2010).

*Industry* – means a classification that refers to a group of companies that are related in terms of their primary business activities. In modern economies, there are dozens of different industry classifications, which are typically grouped into larger categories called sectors (UNDP, 2010).

*Creative industry* - is a quite recent category in academic, policy and industry discourse. The term ‘creative industries’ originated in the mid-to-late 1990s and was first taken up at a national level by the UK government. The adoption of the creative industries concept was very much associated with the election of the new labour government in 1997 and the creation of the department for Culture, Media and sport (DCMS), now department for Culture, Olympics, Media and sport (DCOMS), which built upon the functions of the earlier department of national heritage. One of the new department’s first acts was to set up the Creative Industries Task Force, which was responsible for the landmark Creative industries Mapping document in 1998 and a follow-up report in 2001 (British Council, 2010). This document defined creative industries as “*activities which have their origin in individual creativity, skill and talent and which have the potential for wealth and job creation through generation and exploitation of intellectual property.*” (DCMS, 2001). The creative industries have moved from the fringes to the mainstream (Chris Smith, 2001).

As of 2006 the DCMS definition recognizes twelve creative sectors (down from fourteen in their 2001 document), namely: advertising, architecture, arts and antique markets, crafts, communication design, designer fashion, film, video and photography, software - computer games and electronic publishing, music and the visual and performing arts, publishing, television, radio (DCMS 2006).

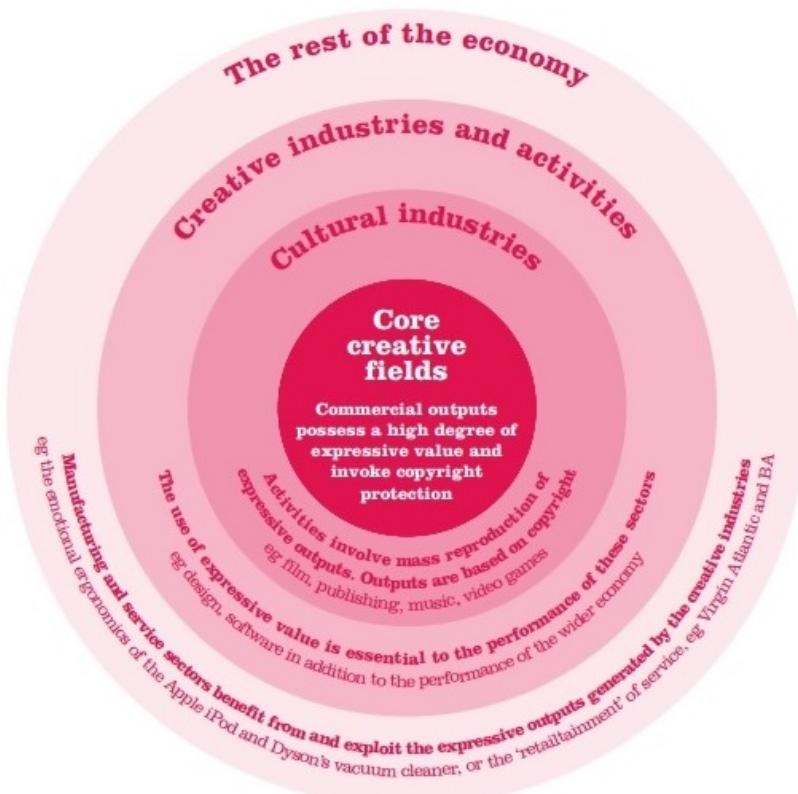
The Creative Industries are made up of a group of activities ranging from arts and consumer products to electronic and digital means of communication. Based on this, three different components can be identified: (i) economic activity directly related to the world of the arts (visual arts, performing arts, literature and publishing, museums, galleries, cultural heritage etc.); (ii) activities related to media (press, publishing, broadcast industries and digital media); and (iii) design related activities (architecture, industrial design, fashion and product design) (Werner Hözl, 2005).

The public sector plays an important role in the creative industries, as some of them could not survive without public financing (Ibid, 2004). Creative industries are sometimes confused with the term “cultural industries”. There are currently various debates about the definition and function of creative and cultural industries as well as the relationship between them. While some critics would argue that creative and cultural industries are adjacent fields, others would see the potential differences as cultural industries being more concerned with delivering cultural and social values to society rather than simply monetary value and creative industries paying less attention to cultural policy but placing more emphasis on their economic impact.

Creative industries are becoming increasingly important components of modern post-industrial knowledge-based economies. Not only are they thought to account for higher than average growth and job creation, they are also vehicles of cultural identity that play an important role in fostering cultural diversity.

During the last decade a number of governments around the world have recognized this fact and started to develop specific policies to promote them. This mainstreaming of what was once considered a sector of marginal interest, which received limited attention from researchers, has led to a growing body of analysis, statistics and mapping exercises on the relationship between culture, creative industries and economic development to give officials in these countries the raw data they need to make policy.

**Figure 1:** A stylized typology



Source: UK, DCI

However, the sector is still poorly understood and many governments remain to be convinced of its potential, while trying to accurately measure economic activity in the sector poses considerable obstacles (UNESCO, 2013). Based on statistics, almost a million jobs and 4 per cent of GDP in Britain, and £7.5bn earned from exports is directly a result of creative industries and their significant role (British Council, 2010).

The term creative industries encompasses a broader range of activities which include the cultural industries plus all cultural or artistic production, whether live or produced as an individual unit. The creative industries are those in which the product or service contains a substantial element of artistic or creative endeavour and include

activities such as architecture and advertising. In this article, these terms are used precisely and are neither synonymous nor interchangeable (UNESCO, 2013).

Almost all state-owned sectors of the creative industries are dependent on public and donor funds. In addition, they are managed without robust business plans that are necessary to make them self-sustainable and profitable in the market. By contrast, the private sector and in particular sectors such as IT, Design, Fashion Design, Architecture and Advertising are performing very well. However, while the application of new technologies to this sector is impressive, particularly in the new electronic media, such developments remain sporadic and far from systematic.

In Kosovo, marketing techniques, such as advertising, design and IT content are widely used in the electronic and print media, election campaigns and central government. They have been developed quickly and are catching up with the global modernization of technologies and communication techniques. All these are promising indicators that must be used to inform a long-term strategy and development policies to increase and manage the effect that such industries can have on the Kosovo economy.

*Creative service industry* - Most advanced economies are becoming dominated by their continuously growing services sector (McKee, 2008; Ramsey & Bond, 2007). The creative services sector is the most important in Europe and especially so in Spain (Mas Verdu', 2007; Romero-Martínez, Ortiz-de-Urbina-Criado & Ribeiro-Soriano, 2010; Un & Montoro-Sánchez, 2010). Creative services sector is very important in Kosovo as a transitional economy also and is the most important economic sector in this place. In fact, it is the sector which, in economic and employment terms, has developed most in recent years. Over the last decade, services in the European Union have provided around 70% of employment.

Traditionally, services have been defined in a negative sense, whereas nowadays service sector is defined as one of the most significant economic sectors. The heterogeneity of the activities of the

service sector has increased the difficulty of understanding the major growth of this sector in modern economies and has contributed to the tendency in the past to consider services as something residual, dependent on manufacturing, technologically backward and, consequently, not very innovative (Mansury & Love, 2008).

Regarding to the research report about Entrepreneurship and Small Business Development in Kosovo published by Business Support Centre Kosovo 2013, around 41.1 percent of the small and medium enterprises belong to service industry.

*Creative commercial industry* - refers to the interchange of goods or commodities, especially on a large scale, between different countries or between populations within the same country. The “Commercial sector” includes trade (the buying, selling, or exchanging of commodities, whether wholesale or retail) and business (the purchase and sale of goods to make a profit). It involves firms that are not engaged in farming, manufacturing, or transportation.

Regarding to the research report about Entrepreneurship and Small Business Development in Kosovo published by Business Support Centre Kosovo 2013, around 42.1 percent of the small and medium enterprises belong to service industry.

*Creative manufacturing industry* – refers to those industries which are involved in the manufacturing and processing of items and indulge in either creation of new commodities or in value addition. The final products either serves as a finished good for sale to customers or as intermediate goods used in the production process. Creative manufacturing industries are the chief wealth producing sectors of an economy. These industries use various technologies and methods widely known as manufacturing process management. Manufacturing industries are broadly categorized into engineering industries, construction industries, electronics industries, chemical industries, energy industries, textile industries, food and beverage industries, metalworking industries, plastic industries, transport and telecommunication industries. Manufacturing industries are important for an economy as they employ a huge share of the labor force and produce materials required by sectors of strategic importance such as

national infrastructure and defense (Economy Watch, 2010). Transitional countries as Kosovo needs manufacturing companies which can employ many people and so decrease the unemployment rate.

*Employment* - is a relationship between two parties, usually based on a contract, one being the employer and the other being the employee (Kaiser Chiefs, 2005). There are two main employment theories: Classic theory and Keynesian theory. The basic contention of classical economists was that if wages and prices were flexible, a competitive market economy would always operate at full employment. That is economic forces would always be generated so as to ensure that the demand for labour was always equal to its supply. According to Keynes the labour market is far from perfect because of the existence of trade unions and government intervention in imposing minimum wages laws. Thus, wages are unlikely to be flexible.

According to the BSCK (Business Support Centre Kosovo), SME survey the average size of employment has increased continuously since start-up. In 2007 the average employment went up to 13.4 employees while the same enterprises declared an average of around 15.5 employees in 2010. This indicates that the number of workers on average from the startup phase has increased by 33 percent, while comparing 2007 and 2010 it has increased by 1.5 percent. Whereas, comparing 2012 with the prior year 2011 the number of workers has increased by 1.7 percent. In 2013 compared to start-up year of companies on average employment grew about 47 % cumulative.

Regarding employee's qualifications, findings indicate that the largest number of employees is more likely to be qualified from gymnasium and other professional secondary school education level which for 2013 is around 62 percent (around 68.6 percent in 2012). The share of employees with university level education is around 27 percent, unqualified employees around 62 percent.

*Export* - is something that is shipped or brought to another country to be sold or traded. Data on the trade balance provided by the

Central Bank of Kosovo (Source: Central Bank of Kosovo – CBK Quarterly Assessment of the Economy) show that Kosovo continues to have a negative balance. Imports to Kosovo in 2012, according to the CBK were in the amount of € 2,489 million, while exports were € 269.3 million. The percentage of coverage of imports by exports was only 10.82 %.

According to BSCK (Business Support Centre Kosovo), the percentage of exporting enterprises in the sample in 2013 is 6.4 % compared to 2012 which was 5.91%. The small number of exporting companies reflects the random sampling procedure applied in this research. Most of the companies started to export their goods and services in 2002, 2008 and 2011. Compared with 2011, the number of companies who are exporting goods and services increased with 0.74% in 2012 and 0.5 in 2013 (BSCK, 2013).

## Hypothesis

- Manufacture, commercial and service creative industries have a positive significance on employment rate.
- Manufacture, commercial and service creative industries have a positive significance on export rate.

## Empirical evidence

**Methodology** - This chapter presents the most significant part of this paper. The first section describes the data collection, sample data, variables, and statistical techniques used to analyze the relationship between dependent and independent variables.

The second part of this chapter describes the results of empirical analysis and relevant discussions.

The last section will draw conclusions based on the results of this research and scientific paper.

**Data** - The research will investigate the role of creative industries on export and employment for the case of Kosovo. The data were obtained in 2013 from Business Support Centre Kosovo (BSCK) which conducted an e-survey to 500 hundred SMEs randomly. Kosovo businesses are not very stable and many of them disappear very quickly, so BSCK has created a backup sample in case of bankruptcy of any business from the first random sample. A lot of companies refused answering questions, and this is another reason why BSCK created another backup random sample. The database which includes 44,303 SMEs, from where BSCK has created the random sample was obtained by the Small Business Agency. The survey includes different kinds of questions but we were more concentrated on the dummy questions about employment, export and three creative industry sectors.

**Variables** - Two dependent variables were selected: employment and export. While independent variables were selected: Creative manufacture industries, creative commercial industries and creative service industries.

**Results** – Business Support Centre Kosovo (BSCK) has surveyed 500 SMEs, where 57 were considered as creative industries. From 57 creative industries 6 were manufacture companies, 12 were commercial companies and 37 were service companies.

**Logistic regression of creative industries and employment** – Through classification T=table we can see how our model accurately predicts 36.4 percent of profits achieved by our profitable firms. Above all, the model predicts 96.2 percent of the firms correctly.

In the column under Sig. we can see that the manufacture creative industries (Man) are not significant at 0.209, commercial creative industries are not significant at the level 0.758 but service creative industries are significant at the level 0.044.

For beta coefficient in logistic regression and its interpretation we look at the last column under Exp (B) which takes a value greater than one if Beta is positive and less than 1 if it is negative. In our case at

the significance level (service creative industries), a value of 1.050 per service creative industry shows that one firm increase (service creative industry), chances of having a positive employment increase by a factor of 1.050.

Omnibus Tests of Model Coefficients				
		Chi-square	df	Sig.
Step 1	Step	8.976	3	.030
	Block	8.976	3	.030
	Model	8.976	3	.030

Model Summary			
Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	36.057 <sup>a</sup>	.215	.306
a. Estimation terminated at iteration number 6 because parameter estimates changed by less than .001.			

Classification Table <sup>a</sup>					
		Predicted			
		Emplln2013			Percentage Correct
Step 1	Emplln2013	0		4	7
		1		1	25
	Overall Percentage				78.4
a. The cut value is .500					

Variables in the Equation							
		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 <sup>a</sup>	Man	-.042	.034	1.576	1	.209	.959
	Com	.005	.016	.095	1	.758	1.005
	Serv	.049	.024	4.069	1	.044	1.050
	Constant	-.097	3.665	.001	1	.979	.908
a. Variable(s) entered on step 1: Man, Com, Serv.							

**Logistic regression of creative industries and export** – In the **column under Sig.** we can see that the manufacture creative industries (Man) are not significant at all of the creative industries. For example manufacture creative industries are not significant at the level 0.409, commercial creative industries are not significant at the level 0.668 and service creative industries are significant at the level 0.832. For beta coefficient in logistic regression and its interpretation we look at the last column under Exp (B) which takes a value greater than one if Beta is positive and less than 1 if it is negative. In our case a positive Beta means a positive value per service creative industry. This shows that an increase per one firm (service creative industry), chances of having a positive employment increase by a higher positive factor.

Omnibus Tests of Model Coefficients				
		Chi-square	df	Sig.
Step 1	Step	.993	3	.803
	Block	.993	3	.803
	Model	.993	3	.803

Model Summary			
Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	28.314 <sup>a</sup>	.026	.048

a. Estimation terminated at iteration number 5  
because parameter estimates changed by less than .001.

Classification Table <sup>a</sup>			
		Predicted	
		Expt	
Observed		0	1
Step 1		0	5
		1	32
Overall Percentage			86.5
a. The cut value is .500			

Variables in the Equation							
		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1 <sup>a</sup>	Man	.014	.016	.682	1	.409	1.014
	Com	.007	.017	.184	1	.668	1.007
	Serv	.006	.030	.045	1	.832	1.006
	Constant	-.425	3.601	.014	1	.906	.654
a. Variable(s) entered on step 1: Man, Com, Serv.							

**Barriers of creative industries** – Creative Industries are important tools for economic development and stability. Strengthening creative industries in Kosovo is a mechanism that would support an increase of foreign direct investments and would accelerate the institutionalization of competitive conditions for both domestic business growth and external businesses' investments in Kosovo (Business Environment in Kosovo, 2014).

Kosovo continues to face issues in creating new institutions and a favorable business environment especially for creative industries, coming primarily as of the war consequences, difficulties of transition process along with privatization, quality of institutions, etc. Yet, as presented on table 1, market of Kosovo possesses several other obstacles to the development of creative industries. Table: 1 shows the obstacles to the development of creative industries as perceived by the entrepreneurs and the comparing of the results among 2012, 2013 and 2014 BSCK surveys. The results are presented in average where 1- is not an obstacle and 5- is the major obstacle – the higher the score the more obstacles is posing for creative industries. As the tables shows, the most significant obstacle for 2014 is lack of managerial skills with 4.15 but the most insignificant obstacle is strong competition with 2.07, in 2013 the most significant obstacle was the competition with 3.95 but the most insignificant obstacle was managerial skills with 1.35. And in 2012 informal economy or black economy was the most significant obstacle with 3.92.

**Table. 1**

Obstacles to business	Average 2014	Obstacles to business	Average 2013	Obstacles to business	Average 2012
Managerial skills	4.15	Strong competition	3.95	Informal economy/black economy	3.92
Employee skills	3.77	Informal economy/black economy	3.81	Strong competition	3.84
Business licensing	3.73	Taxes too high	3.58	Corruption	3.79
Lack of information concerning business	3.65	Supply with electricity	3.57	Taxes too high	3.64
Transport	3.63	Corruption	3.55	Fiscal evasion	3.41
Political instability	3.35	Fiscal evasion	3.34	Supply with electricity	3.33
Access to finance	3.21	Law enforcement	3.22	Law enforcement	3.30
Insufficient capacities	3.18	Crime ,robbery and anarchy	3.21	Sufficient and adequate Laws	3.15
Supply with electricity	3.13	Administrative borders	3.18	Political instability	3.13
Delayed collection of debts	2.95	Sufficient and adequate Laws	2.93	Administrative borders	3.07
Administrative borders	2.93	Political instability	2.88	Crime, robbery and anarchy	3.05
Law enforcement	2.78	Delayed collection of debts	2.68	Lack of market demand	2.94
Sufficient and adequate Laws	2.77	Lack of market demand	2.63	Delayed collection of debts	2.79

Crime, robbery and anarchy	2.77	Access to finance	2.58	Access to finance	2.43
Fiscal evasion	2.72	Insufficient capacities	2.22	Insufficient capacities	2.17
Lack of market demand	2.72	Lack of information concerning business	1.87	Lack of information concerning business	1.85
Corruption	2.56	Business licensing	1.65	Transport	1.80
Informal economy/black economy	2.46	Transport	1.64	Business licensing	1.65
Taxes too high	2.42	Employee skills	1.59	Employee skills	1.53
Strong competition	2.07	Managerial skills	1.35	Managerial skills	1.35

*Business Support Centre Kosovo, 2014*

## Conclusions

Creative industries all over the world have a positive trend. Kosovo shows some positive signs in this aspect too. The number of creative industries in five years have positive trend which is verified through the number of creative industries in the database of the Kosovo Business Registration Agency (KBRA), and the sample collects more creative industries each year.

Thus the conclusion was supported by a statistical test giving evidence that none of the hypothesis has been shown significant in case of Kosovo. The first hypothesis is partially verified as significant where only service creative industries has been shown a positive significance with employment, whereas at the second hypothesis none of the creative industries has shown positive significance with export.

It seems that the creative industries shows more resilience to the impact of the global economic crisis than the traditional manufacturing industries as UNDP stated in the creative economy report of 2010 (UNDP, 2011). This research used sample from Business Support Centre Kosovo only.

Results have shown that the most significant obstacle for 2014 is lack of managerial skills with 4.15 but the most insignificant obstacle is strong competition with 2.07, in 2013 the most significant obstacle was the competition with 3.95 but the most insignificant obstacle was managerial skills with 1.35. And in 2012 informal economy or black economy was the most significant obstacle with 3.92. This shows the awareness of creative industries for managerial skills and its necessity for promoting and facilitating business operations. Identifying this factor as an obstacle is good reason to promote and eliminate it as an obstacle. Strong competition is not an obstacle but a promoter of creative industries and for that reason should not be identified as an obstacle in 2013 and 2012.

More creative industries, more stable business environment is. Less obstacles to creative industries more stable employment rate and export rate are.

## Reference:

- Evis Çarçani, British Council, MAPPING OF CREATIVE INDUSTRIES in Albania, British Council Albania.
- BOP Consulting, Mapping the Creative Industries: A Toolkit, British Council.
- MURAT ŞEKER, Importing, Exporting, and Innovation in Developing Countries, January 2011, Enterprise Analysis Unit Finance and Private Sector Development Vice-Presidency World Bank.
- Hendrik van der Pol, Key role of cultural and creative industries in the economy, March 2013, Director, UNESCO Institute for Statistics, Canada.
- Department for Culture, Media and Sport (DCMS) (1998 and 2001) Creative Industries Mapping document. Creative Task Force. U.K. Government, Department for Culture, Media and Sports.
- United Nations, Creative Economy Report 2008, The Challenge of Assessing the Creative Economy: towards informed Policy making.
- Stuart Cunningham, From Cultural to Creative Industries: Theory, Industry, and Policy Implications, Director Creative Industries Research and Applications Centre, Queensland, University of Technology.
- United Nations (UN), Understanding Creative Industries, Cultural statistics for public policy making.
- Terry Flew, Media & Communication, Creative Industries Faculty Queensland University of Technology.
- Jaka Primorac, The position of cultural workers in creative industries: The south-eastern European perspective, Institute for International Relations (IMO).

- P. Naomi, The Dynamics of Competitiveness in Creative and Manufacturing Industries in the Indonesia Stock Exchange (IDX) of Pre and Post Crisis, Faculty of Economics and Business, University of Paramadina, Jakarta, Indonesia.
- Wolffried Stucky and Peter Wieb, e-Europe – IT Skills: Challenging Europe's Economic Future, Council of European Professional Informatics Societies.
- L. M. Castro, Angeles Montoro-Sanchez, Marta Ortiz-De-Urbina-Criado, Innovation in services industries: Current and future trends, Sept 2010, Staffordshire University.
- Creative Industries Innovation Centre, Valuing Australia's Creative Industries, Dec 2013.
- Daniela Müller, Fifth Austrian Creative Industries Report, 2013, Creative Wirtschaft, Austria.
- Cultural Policies in Albania Council For Cultural Co-Operation Culture Committee, Strasbourg, August 2000: [http://www.coe.int/t/e/cultural\\_cooperation/culture/policies/reviews/CC-CULT\(2000\)54A\\_EN.pdf?L=EN](http://www.coe.int/t/e/cultural_cooperation/culture/policies/reviews/CC-CULT(2000)54A_EN.pdf?L=EN)

**ESSIe**, an EU funded project running from 2002 to 2014 with 6 project partners, aims at the enhancement of the social scientific research in Kosovo and its integration into the European Research Area (ERA). Its core objectives are to support and strengthen social scientific research capacity in Kosovo by developing human resources and research infrastructure, and facilitating participation in the European research programmes. ESSIe project is being coordinated by the Kosova Education Center.

ESSIe project is implemented by the Kosova Education Center (KEC) in partnership with University of Pristina – Institute for Social Studies and Humanities (ISSH), University of Vienna and three non-research institutes from Austria: Center for Social Innovation (ZSI), Institute for Social Research and Analysis (SORA) and Working Life Research Centre (FORBA).

**Publisher: ESSIe project**

The publication of social scientific articles is an ESSIe deliverable produced in the frame of the project's Work Package 4: Establishment and implementation of the International Mentoring Programme, Task 4.3: Supervision of the scientific articles of the mentees. Neither the European Union, nor ESSIe project partners and Kosova Education Center, as a main publisher of this book, are responsible for any use that may be made of the information contained therein.



Katalogimi në botim – (**CIP**)

Biblioteka Kombëtare e Kosovës “Pjetër Bogdani”

303(047)

Social Scientific Articles / [Editor Board Hasnije Ilazi...et al.] – Pristina : Qendra për Arsim e Kosovës, 2014. – 187 f. : ilustr. ; 24 cm.

Bibliografia, referencat pas disa punimeve.

1.Ijazi, Hasnije

**ISBN 978-9951-434-20-1**

This publication is prepared by the EU funded project "Enhancing Social Scientific Research in Kosovo and its integration into European Research Area - ESSle", implemented by the Kosova Education Center (KEC) in partnership with University of Pristina - Institute for Social Studies and Humanities (ISSH), University of Vienna and three non-university research institutes from Viena: Centre for Social Innovation (ZSI), Institute for Social Research and analysis (SORA) and Working Life Research Centre (FORBA).



ZENTRUM FÜR  
SOCIAL INNOVATION



universität wien



S O R A



ISBN 978-9951-434-20-1



9 789951 434201